

STATE *versus* SHEIKH ABDULLAH

KASHMIR ON TRIAL

Introduction by

PANDIT JAWAHARLAL NEHRU

1947

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larger struggle for emancipation. Thus Kashmir became symbolic of the States in India where there is ferment and seething discontent, both political and economic, against the autocratic and often feudal rule that prevails there. The people of other States looked with sympathy towards the people of Kashmir and there was a feeling of solidarity between them. The Rulers of many States, no doubt, sympathised with and encouraged the Kashmir authorities and felt that their own interests were tied up to some extent with the fate of this struggle in Kashmir.

Popular movements which have any reality and strength behind them usually throw up personalities who tipify and symbolise that movement. Thus Sheikh Mohammad Abdulla became the living and outstanding symbol of the urge of the Kashmir people for their freedom. Thus also the trial of Sheikh Abdulla became something much more than the trial of an individual; it was the trial of a whole people. Or perhaps it would be more correct to say that, in the ultimate analysis, it was the trial before the bar of public opinion of the State authorities who had tried to stem the flowing river of the great popular movement.

It is extraordinary how those in authority become blind to the lessons of history; how they cannot even understand current happenings. Just when we find that India

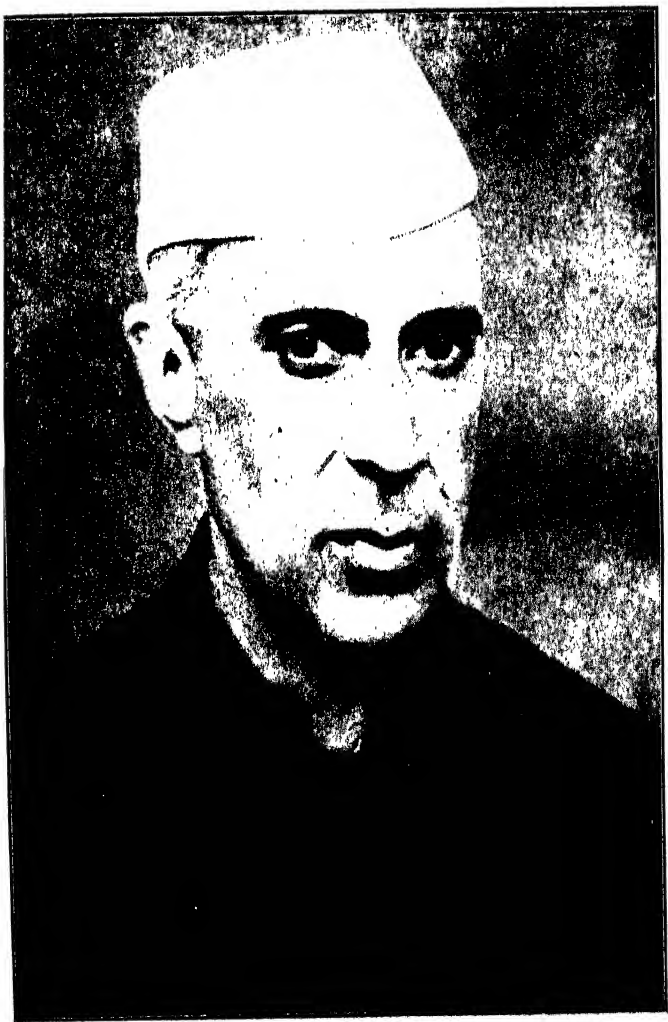
Kashmir authorities, totally oblivious of this fact, seeking to crush their own people and their desire for freedom. A real people's movement can never be crushed in this way, much less can it be crushed when India herself is putting an end to foreign rule.

Because of all these factors, recent events in Kashmir have assumed an all-India importance and the trial of Sheikh Abdulla has a particular significance. I am glad that a record of this trial is being published, for this will bring many new facts before the public and help them to understand what has been happening in Kashmir and what happens or may happen in many another State in India.

The story of this brave struggle against the armed forces of the State has not ended by this trial. That story will go on till it reaches the logical end which can only be the establishment of freedom in Kashmir within the larger frame-work of a free and independent India. Meanwhile Sheikh Abdulla and many of his colleagues lie in prison and to them we send our comradely greetings.

A handwritten signature in dark ink, reading 'Jawaharlal Nehru'. The script is fluid and cursive, with the first name 'Jawaharlal' written in a single line and 'Nehru' on the line below.

New Delhi
24th September 1946.



PANDIT JAWAHAR LAL NEHRU

Our National Demand

“Today the national demand of the people of Kashmir is not merely the establishment of a system of responsible government, but their right to absolute freedom from the autocratic rule of the Dogra House. Nearly a hundred years ago the people of Kashmir became the victims of a commercial deal by the covetous agents of the East India Company. For the paltry consideration of 75 lacs of Sikh currency rupees (less than half a million pounds sterling) the people of Kashmir, the land and its potential wealth, were sold away to Maharajah Gulab Singh, the Dogra vassal of the Sikh kingdom.

“We challenge the moral and political validity of this sale deed, to which the people of Kashmir were never a party, and which has since 1846 been the document of their bondage.

“At this moment, the future of the inhabitants of India is on the anvil, and the constitutional pattern of the future is being hammered out by the British Cabinet Mission. The question of the Treaty Rights of the Princes has become a moot point between

the peoples of the States, the Princely Order, and the Paramount Power. For us in Kashmir the re-examination of this relationship in its historical context is a vital matter.

“ The crux of our contention is this that the sale deed which brought Kashmir under the rule of the Dogra House confers no privileges equivalent to those claimed by states governed by the so-called Treaty Rights. As such, the case of Kashmir itself stands on a unique footing, and the people of Kashmir draw the attention of the Cabinet Mission to their just claims to freedom on the withdrawal of British Power. The sale deed of 1846, misnamed the Treaty of Amritsar, makes the matter quite clear.

“ No sale deed, however, sacrosanct, can condemn more than four million men and women to the servitude of an autocrat when the will to live under his rule is no longer there. We, the people of Kashmir, are determined to mould our own destiny and we appeal to the members of the Cabinet Mission to recognise the justice and the strength of our cause.

“ Kashmir is not merely ‘ a geographical expression ’ in the North-West of the vast sub-continent of India, famed for its beauty and natural wealth, but it is a land strategically situated, the meeting point of India, China and Russia, and as such has an inter-

national significance. Our homeland is the cradle of the Kashmiri nation which by virtue of the homogeneity of its language, culture and tradition and its common history of suffering is today one of the rare places in India where all communities are backing up a united national demand.

“The immensity of the wrong done to our people by the sale deed of 1846 can only be judged by looking into the actual living conditions of the people of Kashmir. It is the depth of our torment that has given strength to our protest.”—*Extract from ‘Quit Kashmir’ Memorandum to the British Cabinet Mission, submitted on behalf of the All-Jammu and Kashmir National Conference.*

Maharajah in Conspiracy

Sheikh Mohammad Abdullah's statement on the ministerial crisis in the Kashmir State, on April 22, 1946.

“Recently the Jammu and Kashmir National Conference Working Committee reviewed the farcical character of the diarchic experiment and decided to withdraw its representative from the Council of Ministers. Accordingly, Mirza Mohammad Afzal Beg resigned from the Ministership, and returned to the opposition benches.

“The Prime Minister, backed by his clique of irresponsible bureaucrats, resorted to the base tactics of attempting to bribe and disrupt the ranks of the National Conference itself. In so doing they had resorted to Machiavellian ways, and Mian Ahmad Yar, the Leader of the Assembly Party has fallen prey to them. His appointment had taken place by direct command of the Maharaja, and therefore his representative capacity just does not exist. Thus *the Maharaja has not only put an axe on the elective system of appointing popular ministers, on the lines of*

his diarchic experiment, but has become a party to the conspiracy against the popular Movement in Kashmir.

“Such an attack on the rights of the people, and the unity of their representative organisation, has come at a time when the minds of the people of Kashmir are already exploring the new perspective opened up by the attempts at constitution-making of the Cabinet Mission. The question of the treaty rights of the Princes has become a moot point between the peoples of the State, the Princely Order, and the Paramount Power. For us in Kashmir, the re-examination of this relationship is a vital matter, because a hundred years ago, in 1846, the land and people of Kashmir were sold away to the servitude of the Dogra House by the British for 75 lacs of rupees. The then Governor of Kashmir resisted the transfer but was finally reduced to subjection with the aid of British. Thus the sale deed of 1846, misnamed the Treaty of Amritsar, had sealed the fate of the masses of Kashmir.

“For the last fifteen years since the inception of our freedom movement in 1931, we have attempted to give a fair trial to all reforms believing that readjustment of human relationships will take place with the extension of the democratic framework to all fields of our national life. Thus we believed that

we could come in line with the rest of the world in the era of the Atlantic Charter and the revision of basic relationships with the dawning of the independence of nations.

“ But once again the last act of His Highness has exposed the continuance of the “feudal master governing the serfs” mentality. This state of affairs cannot be allowed to last. The resurgent spirit of the people challenges it in the name of human dignity.

“ No sale deed, however sacrosanct, can condemn more than four million men and women to the servitude of an autocrat when the will to live under this rule is no longer there. The people of Kashmir are determined to mould their own destiny, and we appeal to the Members of the Cabinet Mission to recognise the justice and strength of our cause.

My dear Victor,

You have, no doubt, read in the papers about the trouble in Kashmir but it is not a thousandth part of what interested parties make it appear to be in the Press. The trouble started with the local demagogue, Abdullah, who is frankly communist and anti-State, suddenly discovering that he could not with impunity carry out his policy of disrupting the Government from within through the agency of his friend who had been appointed Minister, while simultaneously battering the Government from outside by making inflammatory speeches and levelling baseless accusations. Naturally my Government had to take action and took it, with the result that Abdullah and a number of his little friends were arrested. At the time of his arrest Abdullah was apparently on his way to see his Guru Jawaharlal and so Jawaharlal's personal vanity was greatly injured by the fact that his Lieutenant was arrested when on his way to take sanctuary with him. Being what he is, Jawaharlal, has completely gone off the deep end.

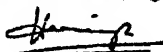
Except for a day or two after Abdullah's arrest life here has been normal and everybody goes about his business. In one quarter of the town between the 3rd and the 4th bridges a Mosque has been converted into a political stage and two or three thousand people including women collect there daily ostensibly for prayers but in reality to keep the show of agitation alive by making inflammatory speeches and using objectionable slogans. We are keeping our end up well and no one interested in us need feel any anxiety. The movement was, of course, very dangerous but we have weathered the storm. In fact, our main headache now is hostile and baseless criticism from Jawaharlal, but even his ranting must have a limit. In any case we are prepared for anything he may say or do - and we think he knows it - in fact in the end he may feel that discretion is the better part of valour and shut up, anyway we will fight and fight to an end. This is a test case for all the States.

I am posting this letter to your Rangoon address and should it reach you, do let me know how long you propose to be in Burma.

We are expecting Tiger for his summer vacations on the 18th.

With kindest regards from us all.

Yours sincerely,



Srinagar,
1st June, 1946.

The Sovereign People

Extracts from the speech delivered by Sher-i-Kashmir Sheikh Mohammad Abdullah before his arrest as reported by the "Tribune", Lahore, in its issue of May 26, 1946.

"The tyranny of the Dogras has lacerated our souls. The Kashmiris are the most handsome people, yet the most wretched looking. It is time for action. To end your poverty, you must fight slavery and enter the field of Jihad as soldiers. The fight slogan of our struggle is not only for our State but for the whole of India. India is fighting against Imperialism. The slogan was given on the banks of River Ravi . . . Then came the slogan of 'Quit India.' The British gained hold of India by the force of arms and by treachery.

"The rulers of the Indian States who possess one-fourth of India, have always played traitors to the cause of Indian freedom. The demand that the Princely Order should quit is a logical extension of the policy of 'Quit India.' When the Indian freedom movement demands the complete withdrawal of British power, logically enough the stooges

of British Imperialism also should go and restore sovereignty to its real owners—the people. When we raise the slogan of ‘Quit Kashmir,’ we naturally visualise that the Princes and Nawabs should quit all the States. I am sure this demand applies similarly to a State like Hyderabad where the people will, I am sure, raise their voice, ‘Quit Hyderabad.’

“Those Hindus who think along with Mr. R. C. Kak that the Dogra rule should remain, should never forget that we are treated in Kashmir as a bought-up race without distinction of religion.

“Handcuffs jingle. They do not make us afraid. God will give us faith in victory. The voice of truth will prevail. Prophets have spoken for the truth, which has always triumphed finally.

“Sovereignty is not the birthright of a ruler. Every man, woman and child will shout ‘Quit Kashmir.’ The Kashmiri nation has expressed its will. I ask for a plebiscite on this question.”

D-Day in Kashmir

‘Monday May 20, was the D-Day and 4 p.m. was the zero hour. The cannons in the Hari Parbat Fort boomed a salute of 21 guns announcing the arrival of Maharaja in his summer Capital, Srinagar and simultaneously telegraph wires buzzed the coded message informing the police headquarters in Srinagar that Sheikh Abdullah was arrested at Garhi, a bottleneck on the Srinagar-Rawalpindi Road.’

Observations by the Special Correspondent of the Globe News Agency on June 10, 1946, of the events subsequent to the arrest of Sheikh Mohammad Abdullah.

Terror Follows Arrest

“The signal was given and swarms of Gurkha and Dogra troops occupied every strategic point in and around Srinagar and literally threw a steel ring round it. With clock work precision a countrywide man-hunt immediately began and within a few hours hundreds of people were arrested and taken in military transports to the Badami Bagh Cantonment for military custody. Gurkhas were given rifles and plenty of ammunition. Dogras were detailed to search houses and effect arrests and Kashmiri policemen were asked to patrol the streets with lathis in their hands.

“An operational headquarter was set up to combine and co-ordinate the police and military forces and operations throughout the state were directed through this operational headquarters. Lorries were protected with thick wire guaze and heavy metal bumpers, soldiers were given steel helmets and officers and magistrates carried revolvers. Dozens of motor cycle despatch riders stood by day and night at the Operational Headquarters. Telephone communications were

paralysed. Mobile contingents armed to the teeth patrolled day and night combing every nook and corner of both the Srinagar city and countryside. That was on Monday and Tuesday.

“By Wednesday about three hundred people were arrested and more than 20 were killed, besides hundreds injured. The instructions to the military were to avoid fire if possible but if necessary then shoot.

“Yet the press notes reported only one killed on Tuesday and later on took up the figure to six. Press correspondents who filed detailed news message later came to grief when they realised that the press telegrams were detained arbitrarily for 24 hours and even more, censored, mutilated and finally signalled to the destinations when they had lost all their news value. A correspondent's copy said that six people were killed but the State censor “corrected” the figure to one.

On Wednesday and Thursday the military took up positions at all important road junctions and on all bridges and ordered all passers-by to walk in lines, one by one with hands up shouting “Maharaj Bahadur Ki Jai.” Those that hesitated or resented were beaten with rifle butts and often pricked on their backs with bayonet ends. Later people were ordered to walk with one leg leaping like lame men and shouting “Maharaj Bahadur

Ki Jai." Some were forced even to walk on their knees. Old men and respectable citizens were forced to crawl on the roads at the point of rifle. Shops were looted and fruit and cigarette vendors robbed. Terror reigned throughout the city for full 48 hours and all shops were closed and people kept indoors due to fear. Lawyers, professors and even Government servants were forced to fill up trenches and sweep the roads. Colleges were deserted as students, boys and girls dared not stir out of their homes.

"A certain old shopkeeper who refused to give free cigarettes was dragged out of the shop by Gurkhas and made to lie flat on the ground and beaten with rifle butts till he became unconscious. He died the next day." —*The Globe Despatch*.

Thus was the Dogra Despot's barbarism unashamed in trampling unwarned people, who dared voicing the truth and demand their freedom.

STATE *vs.* THE REBEL



IN THE COURT OF SESSIONS JUDGE
KASHMIR, SRINAGAR.

Before : Lala BARKAT RAI, B.A., LL.B..

Criminal No. I (A) of 2003.

STATE through WAZIR SARUP CHAND,
Superintendent, Police, Srinagar,—COMPLAINANT

versus

Sheikh MOHAMMAD ABDULLAH, son of
Sheikh MOHAMMAD IBRAHIM, resident of
Sawoora, Srinagar,— ACCUSED.

Charge under Section 124 (A), I. P. C.

Pandit MAD SUDAN KAK and other Public Pro-
secutors, on behalf of the Prosecution.

Mr. ASAF ALI,
Mr. JIA LAL KILAM and others on behalf of the
Accused.



The Complaint

The complaint submits as follows :—

- (1) That the accused with the object and intention of bringing into hatred and contempt His Highness the Maharaja Bahadur and the Government of Jammu and Kashmir as established by law and with a view to exciting disaffection towards His Highness the Maharaja Bahadur and the Government of Jammu and Kashmir as established by law convened public meetings of the National Conference in different parts of Srinagar City and its suburbs on 9th, 10th, 13th, 14th, and 16th of May 1946 (and on many other places as well) in which he addressed the assembled people.
- (2) That on all the above-mentioned dates the accused made seditious speeches.
- (a) And particularly on 10th and 13th May 1946 the accused made speeches in which following passages occur :

(1) ہندوستان کے تین حصے براہ راست انگریزوں کے غلام ہیں۔ اور $\frac{1}{4}$ حصہ Indirect انگریزوں کے ماتحت ہے۔ اس حصہ میں 10 کروڑ انسان غلامی کی زندگی بسر کرتے ہیں۔ اس بد قسمت حصہ میں کشمیر کا بھی حصہ ہے۔ اس میں 40 لاکھ ڈوگرہ راج کے تلے مصیبت میں پڑے ہوئے ہیں۔ اس وقت ہر آدمی کو آزادی کا حق ہے۔ کشمیر کے 30 لاکھ آدمی ڈوگرہ راج کی غلامی میں کس طرح رہینگے۔ (10 مئی 1946ء)

(2) ایک حقیر رقم میں ایک بنٹے کو یہ ملک بیچ ڈالا۔ ہم روپیہ جمع کرینگے۔ اور اسکو کہینگے۔ کہ کسی گناؤں میں جاؤ اور یہ جگہ خالی کرو۔ (10 مئی 1946ء)

(3) اس بیعنامہ نے ہماری قوم کو تباہ کر دیا ہے۔ لہذا آپ کہیں کہ کشمیر کو چھوڑ دو۔ بیعنامہ کو توڑ دو۔..... ہمارا حق ہے کہ ڈوگرہ شاہی حکومت سے آزادی کا حق حاصل کریں۔ (10 مئی 1946ء)

(4) مہاراجہ گلاب سنگھ کے وارثوں کو اس ملک میں کوئی حق نہیں ہے۔ ہم انگریزوں سے کہنا چاہتے ہیں۔ کہ مہاراجہ ہری سنگھ کو اس ملک میں راج کرنے کا کوئی حق نہیں ہے۔ ایک تھوک فروش نے ہمیں خریدا۔ اور پرچون فروشوں میں تقسیم کرتا ہے۔ (12 مئی 1946ء)

(5) آپ کا فرض ہے کہ اپنی تحریک کو ایک مقصد پر رکھیں۔ آپ پر فرض ہے کہ ڈوگرہ شاہی راج کو ختم کر دیں۔ آپ کا فرض ہے کہ سب کو دعوت دیں۔ اور کہیں کہ ہمیں ڈوگرہ شاہی حکومت سے آزادی حاصل کرنی ہے۔ خواہ اس میں آپ کی جان، دولت، مکان تباہ ہو جائیں۔

اس سے زیادہ اچھا وقت اور کوئی نہیں کہ ڈوگرہ شاہی کو ختم کر دیں۔

(b) That on the 14th May 1946, in connection of his previous speeches he made a speech in which the following passages occur :

(1) آج تک مختلف طریقوں سے میری آواز دبانے کی کوشش کی گئی۔ میں نے یہاں کے مہاراجہ ہری سنگھ سے انتہائی عقیدت دکھائی اور کہا کہ اگر آپ صرف کروڑوں روپیہ جو عیش و عشرت میں خرچ کرتے ہیں۔ اس رقم سے غریبوں کی حالت بذاتے تو بہتر تھا۔ مگر جوں جوں میں کہتا گیا۔ توں توں ہم پر ظلم و ستم روا رکھا گیا۔ (14 مئی 1946ء)

(2) ہم اس ملک کے 30 لاکھ آدمی جائیداد وغیرہ کے سمیت 50 لاکھ روپیہ میں بیچے گئے۔ جب ہم بیچے گئے ہم سے ایسا سلوک کیا گیا جو ایک جانور سے کیا جاتا ہے بیگار میں لوگ لٹے جاتے تھے۔ جو بے کفن مر جاتے تھے اس ظلم میں یہاں کے لوگ باہر بھاگ گئے۔ (14 مئی 1946ء)

(3) میں نے اب یہ اچھی طرح محسوس کیا ہے۔ کہ یہاں پر ہم تب تک آرام سے نہیں بیٹھیں گے جب تک ڈوگرہ شاہی کا خاتمہ نہ ہو۔ اب اس بیعنامہ میں ایک حد ہے۔ کہ مہاراجہ کا اقتدار بھی ختم ہو۔ (14 مئی 1946ء)

(4) نیشنل کانفرنس کا یہ پروگرام ہے کہ ڈوگرہ شاہی کا خاتمہ ہونا چاہئے۔ اس ملک کی حکومت یہاں کے لوگوں کے ہاتھوں ہی منتقل ہونی چاہئے۔ (14 مئی 1946ء)

(5) اس ملد میں آپ کو راج کرنے کا کوئی حق نہیں ہے۔ سو سال کی مفلوک الحالی کے بعد تم یہ کہتے ہو کہ وہ راج تم نے کبھی قبول نہیں کیا۔ نہ کرینگے۔ اس حق کے لئے ہمیں انتہائی قربانی دینی ہوگی۔ سو سال کے بعد ایک سال بھی ڈوگرہ شاہی کے غلام بن کر نہیں رہینگے۔ جب تک ہم اس غلامی سے آزاد نہیں ہونگے۔ تب تک ہم چین سے نہیں بیٹھیں گے۔ (14 مئی 1946ء)

(6) آپ تیاریاں کریں اپ اس آواز کے پیامبر ہیں۔ کہ اس غلامی کی زنجیروں کو ختم ڈوگرہ شاہی حکومت کو ختم کر دیں۔ (14 مئی 1946ء)

(c) And in his speeches of 16th May 1946, the following passages occur :

(1) ریاستی ہندو، مسلم، سکھ کیا چاہتے ہیں۔ وہ غلام در غلام زندگی سے نجات چاہتے ہیں۔ راجوں مہاراجوں کی عیش پرستی کے مزید شکار نہیں ہونا چاہتے..... چالیس لاکھ آدمی ایک آدمی کی عیش پرستی کا شکار ہو رہے ہیں۔

(2) میں ان ہندوؤں سے جو ڈوگرہ راج کی جیسے پکارتے ہیں۔ میں ان سے کہتا ہوں کہ ڈوگرہ راج بتاؤ کیا ہے اس کی بنیاد شرمناک غداری ہے..... میں آج 1946ء میں اس شرمناک غداری کا انتقام مہاراجہ گلاب سنگھ اور اس کے وارثوں سے لوں گا۔ (16 مئی 1946ء)

(3) اس نے پیشینگوئی کی۔ کہ وقت آئیگا کہ جب ان قبروں سے کشمیر کے قبروں سے مردے کفن پہاڑ کر نکلیں گے اور کہیں گے۔ ڈوگرہ راج مردہ باد۔ کشمیر کو چلو!

دو.....کوٹی طاقت کوٹی سازش اس قوم کو غلام نہیں رکھ سکتی۔ (16 مئی 1946ء)

(4) کشمیر کی آزادی کا فیصلہ ہمیں اپنے خون سے کرنا ہے۔ (16 مئی 1946ء)

Revolt is the right of a slave.

(5) ہم سو سال بعد اس ڈوگرہ راج کو ختم کر دینگے.....جنگ کا بگل بجا نہیں ہے۔ کسی وقت بجیگا اس شرمناک غداری کا انتقام لو۔ (16 مئی 1946ء)

(6) یہ لڑائی 1946ء میں اس شرمناک غداری کے ساتھ ہے جسکا انتقام لینا ہے۔ یہ جنگ پاک جنگ ہے لوگوں کو اس جنگ میں شریک ہونے کی تلقین کرو.....لوگوں کے خون اور پسینہ کی کماٹی جو لوگ کتوں پر گھوڑوں پر خرچ کرتے ہیں۔ وہ ظالم سے بھی بد تر ہے۔ ان کے پھندے سے چھوٹنا ہر ایک آدمی کا فرض ہے۔ (16 مئی 1946ء)

That in the above-mentioned speeches in general and the particular passages noted are calculated to bring into hatred and contempt and excite disaffection towards His Highness Maharaja Bahadur and the Government of Jammu and Kashmir as established by law and as such come within the purview under section 124-A R.P.C.

(4) That before driving and after the meetings among other slogans the following were raised as a direct con-

sequence of excitement of feelings caused by the speeches. These slogans have no other significance and effect except that of hatred and contempt against the ruler and the family.

- (5) That all these offences have been committed within the period of one month and so they can be tried at one trial.
- (6) That a certified copy of speeches is attached herewith.
- (7) That the sanction of the Government for the prosecution of the accused under section 124-A R.P.C. for the speeches containing seditious matter, made by him is attached herewith.

It is prayed that the accused may be tried for offences under section 124-A R.P.C. and adequately punished.

28-5-46.

(Sd.) S. P.

“I hold . . .”

“The fundamental rights of all men and women to live and act as free human beings, make laws and fashion their political, social and economic fabric, so that they may advance the cause of human freedom and progress, are inherent and cannot be denied though they may be suppressed for a while. I hold that sovereignty resides in the People, and all relationships, political, social and economic, derive authority from the collective will of the People.”

—Sheikh Mohammad Abdullah.

[Extract from the historic Defence Statement before the Court.]

“ Not Guilty ”

The statement of Sher-i-Kashmir in the Court of the Sessions Judge, Srinagar.

1. I have pleaded not guilty to the charge of ‘ sedition,’ which according to jurists, is a crime against society, and I stand by whatever I have said or written in regard to the fundamental rights of the people of Jammu and Kashmir.

The reports of my speeches, though neither verbatim nor strictly accurate, are fairly correct. But when reliance is placed in the complaint and the charge, on certain sentences, torn out of their context and not free from distortion, a wrong impression is likely to be produced. I owe it to myself and the decencies of civilised controversy to state that I have maintained a clear and direct distinction between persons and policies, between individuals and the system of Government which they operate, and I would not allow any undignified or indecent reference to or vulgar abuse of any one anywhere. I have, however, all along sought the alteration of policies and measures

and a vital change in the system of government by legitimate and civilised means, for it is the birthright of Man to shape and mould the law by which he must live.

2. I must also repudiate the charge that the violence to which the people are alleged to have resorted after my arrest resulted from my speeches, for realism alone would not permit me to contemplate a violent clash between the unarmed people and the armed might of the State. I called a total halt even to speeches after May 16th, and was proceeding to Delhi on May 20th for consultation with the responsible leaders of the All-India States Peoples' Conference. I was not allowed to proceed far and was arrested at Garhi. The news of my arrest naturally called forth a public protest, which was met with violent repression, and the bullet holes in Khanqah-i-Mualla bear silent testimony to it. Subsequently a chain of happenings took place, the bitter memory of which is fresh in everyone's mind. Even up to now fresh links are being forged in that dreadful chain of ruthless suppression and suffering. An elaborate attempt has been made by the prosecution to connect the events that happened after and in consequence of my arrest, which I am advised are irrelevant to the case, with my speeches. Thus, oddly enough, is sought to be justified

the precipitate and uncalled for action of the Government in suddenly arresting me and hundreds of our colleagues, and turning the military loose on our people, in pursuance of a policy of frightfulness, resulting in the death, injury, humiliation and harrassment of many innocent men and women.

3. I am not interested in a personal defence, and I would not have undertaken it if I had not felt that my trial for 'sedition' is something far more than a personal charge against me. It is, in effect, a trial of entire population of Jammu and Kashmir, even though some of them, being content with their transient personal interests or out of fear, may not be prepared to recognise or openly declare this.

Oppressed by the extreme poverty and lack of freedom and opportunity of the people of Jammu and Kashmir State, I and my colleagues of the Jammu and Kashmir National Conference, many of whom are behind prison bars or in exile today, have humbly sought to serve them during the past sixteen years. We have endeavoured to give faithful expression to the growing consciousness among the people of their imprescriptable rights, aspirations and desire for freedom. This has attracted the penal and preventive provisions of law. Where law is not based on the will of the people, it can lend itself to

the suppression of their aspirations. Such law has no moral validity even though it may be enforced for a while. There is a law higher than that, the law that represents the people's will and secures their well-being, and there is the tribunal of human conscience, which judges the rulers and the ruled alike by standards which do not change by the arbitrary will of the most powerful. To that law I gladly submit and that tribunal I shall face with confidence and without fear, leaving it to history and posterity to pronounce their verdict on the claims I and my colleagues have made not merely on behalf of the four million people of Jammu and Kashmir but also of the ninety-three million people of all the States of India. That claim has not been confined to the people of a particular race, or religion or colour. It applies to all, for I hold that humanity as a whole is indivisible by such barriers and human rights must always prevail. The fundamental rights of all men and women to live and act as free beings, to make laws and fashion their political, social and economic fabric, so that they may advance the cause of human freedom and progress, are inherent and cannot be denied though they may be suppressed for a while. I hold that sovereignty resides in the people, all relationships political, social and economic, derive authority from the collective will of the people.

The State and its Head represent the constitutional circumference and the centre of this sovereignty respectively, the Head of the State being the symbol of the authority with which the people may invest him for the realisation of their aspirations and the maintenance of their rights. The people who constitute the State must be the first charge on the resources and the primary concern of the State. In promoting the good of the people there must be no discrimination between one group and another, and all of them should have equal rights, obligations and opportunities. No artificial disability should be premitted to operate to the prejudice of any individual or group or community.

4. Through ages past Kashmir has been famed throughout the world for its entrancing beauty, the peaceful and intellectual pursuits of its people and the skill of its craftsmen. Nature has bountifully endowed this land and placed it as a lovely crown on the brow of India. If people from far countries are attracted to it, what must be the feelings of those whose homeland it is and who have been nurtured in its bosom and who have drunk deep of its beauty and exhilarating air? And yet this land of fable and romance and abounding resources continues to suffer in the grip of appalling squalor, poverty and misery, and through starvation

and want, the bright eyes of its people have lost their lustre and their faces have become dull and lifeless. When we who are of Kashmir look at this strange paradox, we are moved to our innermost depths and an overwhelming desire seizes us to do our utmost to change this unhappy scene and make of Kashmir what nature designed it to be. It is this urge that has carried us forward, even though dangers and difficulties have faced us and it is this urge that has gradually brought hope to our people and somewhat lightened their burden. Moved by this grim reality the National Conference of Jammu and Kashmir drew up a plan for the future government of Kashmir, in which it embodied a Charter of the people's rights and obligations, a plan of democratically organised responsible government with a constitutional Head, and an economic structure of society, and call it "NEW KASHMIR." It represents the fundamental rights and aspirations of the people of Jammu and Kashmir, and is in full consonance with the demands and policies of the rest of India and the All-India States Peoples' Conference, of which I have the honour to be Vice-President. I have participated in the formation of the policy of that Conference and I agree with it now as I have done in the past.

5. This Conference has clearly laid down that the old treaties between the States and

the British Government or its representatives are obsolete, and must end. That applies to all treaties including the Treaty of Amritsar, which has some special and unhappy features which make it a kind of sale-deed of the territory and people of Kashmir. This treatment of a people as a commodity which can be transferred for hard cash has all along been deeply resented by the Kashmiris, whether Hindu, Sikh or Muslim. It hurts their national dignity. In practice, the peculiar nature of the Treaty of Amritsar has led to all kinds of discrimination against the Kashmiris, resulting in their treatment as some kind of a lower class.

6. In March last, as the culmination of various events, the British Prime Minister made the following announcement :

“ My colleagues are going to India with the intention of using their utmost endeavours to help her to attain her freedom as speedily and fully as possible. What form of Government is to replace the present regime is for India to decide ; but our desire is to help her to set up forthwith the machinery for making that decision.

* * *

“ I hope that India and her people may elect to remain within the British Commonwealth. I am certain that they will find great advantage in doing so.

* * *

“ But if she does so elect, it must be by her own free will. The British Commonwealth and Empire is not bound together by chains of external com-

pulsion. It is a free association of free peoples. If, on the other hand, she elects for independence, in our view she has a right to do so. It will be for us to help to make the transition as smooth and easy as possible."

This announcement affected the Indian States as well as the rest of India, and the people of the States felt that just as the people of India as a whole would decide about their future, both internally and internationally, as also they must have the right to determine their own future within the States and in relation to the larger framework of a free India. That was not only a logical, reasonable, and long standing demand, but also it seemed to be the inevitable consequence of what the British Government had stated. The All-India States Peoples' Conference gave clear expression to this demand and looked forward to sharing, on behalf of the people of the States, in fashioning the future in co-operation with others.

7. It was clear that the old treaties with the States had to go. They represented something that had no relation to the modern world or to the India of today. They could not be reconciled with the inevitable changes in India and in the States. If this was clear to begin with, it became an accepted fact by the Statement issued by the Cabinet Delegation of 16th May last. That Statement declared that paramountcy would end

when the new constitution of free India came into being. It was an inevitable consequence that the old treaties and sanads and other engagements would go the way of paramountcy, and, the British Government being out of the picture, a new relationship would have to be negotiated between what is now known as British India and the States. The demand for the abrogation of the Amritsar Treaty was, in effect, disposed of by this clear decision of the Cabinet Delegation. The future constitutional set-up in the State of Jammu and Kashmir cannot derive authority from the old source of relationship which was expiring and was bound to end soon. That set-up could only rest on the active will of the people of the State, conferring on the Head of the State the title and authority drawn from the true and abiding source of sovereignty, that is the people. The "Quit Kashmir" cry symbolised and gave concrete shape to this demand for the termination of a system of government which was in process of dissolution all over India. That cry had nothing personal about it.

8. Meanwhile developments in Kashmir had led to a crisis. A brief reference to the circumstances preceding the crisis is necessary here. Certain constitutional changes were introduced in 1944 which were glaringly inadequate and fell far short of the demand of the situation. Yet we agreed to work

them in order to expedite and facilitate further change and, in particular, because we hoped that this would lead to contacts with the Ruler and co-operation in bringing about essential changes. But our efforts ended in failure and these constitutional changes were reduced in practice to a futile shadow. The intolerable privations and grievances of the people of Jammu and Kashmir found no relief or remedy. A microscopic minority of variously graded *jagirdars* was, and is, allowed to exercise indefensible rights over large sections of the people who live in appalling poverty. In Jammu province, especially in Chenani and Poonch, the *Jagirdari* system presents a pathetic spectacle of degrading poverty and heartless exploitation. In recent years, Kashmir province has been, and is still being, parcelled out in *jagirs* which are granted to a small group of favourites. Thus, when land reform is considered everywhere an essential preliminary to progress, in this State a semi-feudal land system is actually being extended with all its attendant evils. As one goes up the higher valleys of the State, one is enchanted by the loveliness of mountain and valley and, at the same time, struck dumb by the degradation of human beings living there. The Army of the State is drawn almost entirely from a selected class of persons of Jammu province only. The people of Kashmir province, whet-

her Hindu or Muslim, and even though they may live in Jammu province, are completely debarred from entering the army. The Kashmiris may join, and have in fact joined and distinguished themselves in the British Indian Army, but they are not eligible for the State army. In regard to the keeping of arms there is also an invidious distinction in favour of a selected class the rest not being allowed this freedom. This discrimination between one set of people in the State and another, which has nothing to do with religion, debars the bulk of the population of Jammu and Kashmir from the possession of arms and is evidence of the suspicion and distrust of this vast proportion of the State's inhabitants. It is a humiliation which is felt deeply and which underlines the policy of the State in emphasising the inferiority of the great majority of the people.

9. The State has vast and rich natural resources but these have failed to relieve poverty and utter want. Indeed no effort is apparently made to develop these resources for the common good, and Kashmir continues, in a changing world, static and unchanging and steeped in misery. This can only be due to the failure of human agency and the autocratic system of administration. It can only be remedied by the representatives of the people undertaking the task of planning and development for the rapid

betterment of the masses. No state can succeed in raising the standard of its people's life without educating and training them to pursue creative and productive activities. The percentage of literacy in the State is 6, the percentage of higher education is 1, and the average income per capita is Rs. 11/- per annum. This by itself is an eloquent commentary on the system and structure of government to which the slogan "Quit Kashmir" is addressed.

10. Prime ministers had been coming and going in rapid succession, though Kashmir remained static. It seemed almost that some malign fate held our fair country in its vicious grip and prevented it from coming out of the quagmire in which it was sinking. War came and convulsed the world, but Kashmir remained the same backwater where time seemed to be still and the clocks did not function, except sometimes when they went backwards. The events of 1942 and 1943 shook the whole of India to its innermost depths and affected the people of Kashmir also powerfully. As elsewhere in India, political consciousness here rose to new heights and a sense of intolerable frustration seized the people. They could not remain where they were, they could no longer continue enduring their poverty and misery, which had increased under the stress and strain of war

conditions. And yet they could not do anything to change what they could not tolerate, for the door of change was barred and bolted.

11. The present Prime Minister came to occupy the seat of authority and a new and disastrous policy of alienating the people was inaugurated. The position of the popular Minister was made intolerable and he found himself compelled to resign. Soon after, as a result of a secret intrigue, a member of the National Conference was won over by the State authorities and made a Minister overnight in contravention of the rules and procedure laid down by His Highness. This sudden development came as a great shock to the people and they began to feel that His Highness had been influenced by the small coterie that surrounded him to act in a manner which was not expected of the impartial Head of the State.

12. The sole object of the Premier's policy was to crush the popular movement as represented by the National Conference presumably because this great organisation was the strongest and the loudest in voicing the people's demand for political and economic changes. We have the authority of the Premier himself for the statement that he started this policy immediately after taking office. To a newspaper correspondent he

stated soon after the 20th May : " We have been preparing for it for eleven months and now we are ready to meet the challenge. There will be no more vacillation and no weak-kneed policy. We shall be ruthlessly firm and we make no apology about it." Strangely enough, the Premier had the clairvoyance to prepare for the effect of my speeches eleven months before they were delivered or " Quit Kashmir " was heard as a slogan. Even before those speeches elaborate military preparations were made all over the valley and again on the Premier's authority three units of the army were flown to Kashmir. There was much planning ahead. The Governor of Kashmir has stated : " We planned ahead with the help of the police and military. The combined operation of the two alone we knew could save the situation. The fusion has worked well and yielded good results. My faith in stern measures before the trouble spread has been justified."

13. It is this eleven months' preparation, and all that went with it, that is the direct cause of the happenings since the 20th May, not a few speeches delivered by anybody or some slogans shouted by a crowd. It is an ironical irrelevance to discuss the merits or demerits of a speech and to ignore the patent and admitted actions of the Kashmir State Administration which inevitably led, and

were meant to lead to recent events. The climax of the Prime Minister's 'ruthlessness' was reached after the 20th May, when men and women were done to death by the military, women were dishonoured; human beings were made to crawl or hop on one leg along roads and sweep them with their turbans; places of worship were desecrated, and an attempt was made to terrorise our whole people by methods of frightfulness. Eleven months' preparation of the Premier's 'ruthlessness,' and all the careful thought that had gone towards the co-ordination of the military and the police, had borne fruit.

14. Some allegations have been made that "Quit Kashmir" and the demand for the abrogation of the Treaty of Amritsar had communal or communist inspiration. This is a travesty of fact and I deny and repudiate these allegations. The National Conference is essentially a national organisation including in its fold all people who agree with its objective, and co-operating with the All-India States People's Conference, with which it is affiliated. It stands in the All-India context for the independence and freedom of India. It stands also for social and economic changes to end privilege and to raise the masses.

15. It is a small matter whether I am imprisoned and tried and convicted.

But it is no small matter that the people of Jammu and Kashmir suffer poverty, humiliation and degradation. It has been no small matter what they have endured during the violent repression and horror of the past two months and more, and what they are enduring now. These very events have demonstrated the justice of our demand and of our cry "Quit Kashmir." For a system of government that can subsist only by pursuing such methods stands condemned. If my imprisonment and that of my colleagues' serves the cause to which we have dedicated ourselves, then it will be well with us and we shall take pride in thus serving our people and the land of our forefathers.

16. Kashmir is dear to us because of its beauty and its past traditions which are common to all who inhabit this land. But it is the future that calls to us and for which we labour, a future that will be the common heritage of all, and in which we as free men and women, linked organically with the rest of India, will build the New Kashmir of our dreams. Then only shall we be worthy of the land we dwell in.

“Is it a Crime . . . ?”

The main question in this case is whether it is the right of a People to demand responsible government even in emphatic terms if necessary . . .

. . . Is it a crime to say that the basis of the Government of this state should be the will of the People and not a treaty which is 100 years old and which is impugnable in the highest International Court of Justice? This is the issue involved in this case and nothing less.

—Mr. Asaf Ali.
The Defence Counsel.

Asaf Ali Defends

May it please the Hon'ble Court :

It is after 3 weeks that we seem to be within sight of the conclusion of our rigorous labours which might easily have been curtailed if only the prosecution had not been too anxious to try to get over the limits of the law of sedition as they stand today. Their anxiety to try to bring purely innocuous and innocent speeches within the mischief of Section 124-A naturally led them into what I would describe as an effort at legal padding and thus by devious byways they have brought on record data which, with due reference to your ruling, I still maintain are totally irrelevant to the case before us. However there is time enough for me to say something about it later on. For the moment I would crave your indulgence while I make a few prefatory remarks.

A HISTORICAL TRIAL

For a variety of reasons both intrinsic and extrinsic, this trial has become, what will

probably go down in history as a memorable trial, and particularly in the chequered history of Kashmir the statement which the accused has made in this case will be regarded as the Charter of the Peoples Rights and Obligations, and it will be remembered by the generations to come. The importance which this case has acquired both in legal history and the history of this State, and I make bold to say also in the history of Indian India as a whole, is fully reflected by the fact that great personalities of India like Mahatma Gandhi, Pt. Jawaharlal Nehru, Maulana Abul Kalam Azad, Sardar Vallabh-bhai Patel have somehow or other been brought within the orbit of this case because they have taken interest in its development and termination. Public interest in this trial in India did not stop there. It is a well known fact that even His Excellency the Viceroy and His Highness the Chancellor of the Chamber of Princes were also apprised of the existence of this case and they have, it is believed taken notice of it. And as far as general public interest is concerned, the space which has been devoted to the reports of this case in the Press is a fair measure of the deep interest the vast educated population of India has taken in it. It is also a historic trial in this sense, Sir, that in it are involved deep fundamental issues. It is not a simple case of sedition ; if it were a simple case of sedition

the prosecution themselves would have kept themselves strictly within the limits of the law of sedition and would have ended the case within 3 days. But apparently the prosecution thought that it was not a simple case of sedition. It seemed to them to turn upon an issue which goes to the very root of the constitution of the State. In it is involved the great issue of the fundamental rights of the people of the State, not only of this State, but of all the Indian States.

THE BASIC ISSUE

The main question in this case is whether it is the right of a people to demand responsible Government even in emphatic terms if necessary. The prosecution here challenges this right of the people to raise their voice in assertion of their fundamental rights. The entire essence of the speeches delivered by the accused from the 6th to the 16th is none else but this. What is it that he is demanding? He is demanding responsible and representative Government, a Government which is conducted by the people for the people. Is this an unreasonable demand? Today in this year 1946 when the British Cabinet has declared that India has the right to be free and if India elect to sever her connection with the British Empire she will be within her rights; at a time when the

whole world is thinking in terms of the freedom of the people, is it a crime to say that the basis of the Government of this State should be the will of the people and not a Treaty which is 100 years old and which is impugnable in the highest international court of justice? This is the issue involved in this case and nothing less.

THE PEOPLE'S VOICE

The accused's voice may be stifled behind prison walls, but it will continue to echo and ring for all time to come; it can never be suppressed; it can never be stopped. It is the voice of human conscience; it is the voice of the people. Sheikh Abdulla is only a symbol of the people's undeniable aspirations and rights. What he is saying now will be repeated time and again, and it will go down in history. Therefore, I maintain that if this is held to be a criminal utterance it will be a grave infringement of the rights of the people and of what is known in constitutional law as "inherent sanction" or the people's will. But, Sir, I need not unnecessarily dilate at this stage on this point, I shall have time enough to comment on it in due course. Let me for the time being try to examine and analyse the law and the authority under which the prosecution have started this case. Perhaps you will permit me, Sir, before I proceed

any further to make a passing remark about the wisdom of launching this trial. The more I have pondered over the possible repercussions of this trial the more has it been borne in upon me that it is a most ill-conceived and ill-advised trial. It is not the trial of one individual; it is not the trial of Sheikh Abdullah; it is the trial of the entire people of the State, and it is the trial of the rights and principles by which alone the State is to subsist firmly on the bedrock of the people's will.

COURT'S DUTY

However, Sir before I proceed any further I would request you to bear with me for a little while longer while I invite your attention to your duties. Your duties are very clearly defined in a judgment of the Federal Court, which is the latest decision of the highest Indian Tribunal on the subject. Instead of my giving you the purport of it, it would be by far the best if I read the appropriate portion of it where the learned judges of the Federal Court lay down what a judge ought to do in a case of this nature. It was a case from Bengal and the judges of the Calcutta High Court had found the accused guilty, but the Federal Court reconsidered the whole case and finally came to the conclusion that it was a case for acquittal not for conviction, and in analysing the principles

which governed the law of sedition, their Lordships said "The language of Section 124-A, Penal Code, if read literally, even with the explanations attached to it, would suffice to make a surprising number of persons in this country guilty of sedition ; no one however supposes that it is to be read in this literal sense. The language itself has been adopted from English law, but it is to be remembered that in England the good sense of jurymen can always correct extravagant interpretations sought to be given by the executive Government or even by judges themselves : and if in this country that check is absent, or practically absent, it becomes all the more necessary for the Court, when a case of this kind comes before them, to put themselves so far as possible in the place of a jury, and to take a broad view, without refining over much in applying the general principles which underlie the law of sedition to the particular facts and circumstances brought to their notice." I invite your attention to the fact that even in the view of the highest court of the country, today the duty of the judge in trying a case of sedition is not merely to act as a judge but to act as a jury too. As far as the intention of the speaker and the effect of his speeches are concerned you have to judge as if you were a member of the audience.

THE SANGUINARY DAY

I shall now try to examine the law and the authority under which this prosecution has been launched. As in every case, Sir, certain dates are vital and important, in this case also 6th May 1946 seems to be the starting point. Now it has been said that the accused who had been absent from Kashmir for some time, possibly for a month or a little longer, returned to Srinagar somewhere towards the beginning of May, possibly on the 2nd or the 3rd. It is not too clear from the records here, but it is perfectly clear from the evidence that has been led by the prosecution that he was here on the 6th of May. The sanction has confined the prosecution to three dates, namely the 13th, the 14th and the 16th, although the complaint contains certain passages from the speech of the 10th also. Then the 21st becomes what I would call the sanguinary day of Kashmir. A certain incident had taken place before the 21st, namely the arrest of the accused on the 20th, the news of which spread in the city at night and the next morning ushered in a reign of terror, a reign of blood-shed, and the killing of the members of the public, because a few simple bruises had been sustained by the military and the police. This chapter I would call the ugliest, at least of this year, if not of earlier times. An earlier date that

is the 17th, also, becomes another important date according to the prosecution, because the 17th of May is supposed to have been marred by a scuffle between two alleged political parties or followers of alleged political parties in which a few young men having suddenly made up their minds to beard the lion in his own den went out of their way to provoke a quarrel. One belonging to a place 5 miles from Fateh Qadal and the other belonging to another place which is also quite far away from the place of this occurrence, led a band of youngmen and deliberately sought quarrel. That incident, Sir, has nothing to do with the effect of the speeches of the accused. The next important date would be the 24th which according to a Government Press Communique, marks the end of the disturbances. I shall have occasion to read it out to you. Then we come to some other dates which are equally important and which have a special meaning as far as I am concerned. Upto the 20th nothing had happened. *(At this stage the noise of machine gun fire and the reports of military bombs or mortar fire from nearby became so loud that Mr. Asaf Ali stopped speaking and waited until the machine-guns had ceased firing. The Court remained adjourned for nearly 20 minutes.)* Resuming his argument Mr. Asaf Ali said "Now that the disturbing noise of organised violence has been silenced the voice

of justice and freedom may continue. This is exactly what happens all over the world. When violence has exhausted its ammunition, human rights and freedom movements resume their sway."

ARREST ILLEGAL

I was just now saying that on the 20th something happend which has got to be examined carefully. A certain order was passed on the 20th by the Hon'ble Prime Minister of the State, Whether it was actually signed on the 20th, I do not really know; but I presume that it was passed on the 20th because under the signature of the Premier appears 20th May 1946 in the hand-writing of someone else. So we may assume that this order for the prosecution of the accused was signed that day. But something very curious happened apart from this order and that was the arrest of the accused without a warrant. The arrest of the accused took place on the 20th, sometime in the afternoon at a place called Garhi which is fairly far away from here. This arrest was effected, Sir, by a gentleman who held the office of a Superintendent of Police. He went post haste in a car from Srinagar to Garhi and arrested the accused, according to his evidence, under section 54 of Criminal Procedure Code. And now let me read the Section in question : " Any police officer may, without

an order from a Magistrate and without a warrant, arrest any person who has been concerned in any *cognizable* offence or against whom a reasonable complaint has been made, or credible information has been received or a reasonable suspicion exists of his having been *so-concerned*." The rest of the Section is entirely inapplicable, but if you like I will read it. It is perfectly obvious that the offence of sedition in respect of which sanction was granted that day was not a cognizable offence and Sheikh Abdullah could not be arrested under this Section without a proper warrant. Even if the police officer was aware of the existence of the sanction he had not the authority to arrest the accused. No complaint had yet been lodged anywhere and no warrant of arrest issued by any Magistrate. It is perfectly obvious that the accused was not even suspected of having committed a cognizable offence. In fact it is proved by this case that the only charge that could possibly be brought up against him was that of sedition which is a non-cognizable offence. I maintain that the arrest of the accused took place under circumstances which would amount to utter disregard for the law. His arrest was wholly illegal. He was detained illegally at the time. The accused has a good cause to complain, although principles of equity do not come into play as far as criminal courts are concerned, that the

Government have not come to this Court with clean hands, because they are guilty of illegally and unlawfully arresting and detaining him.

At this stage the prosecution interrupted and tried to point out that there was a case under Section 32 Jammu and Kashmir Defence Rules against the accused. Mr. Asaf Ali pointed out that there would be sufficient time for the prosecution to answer his argument and that he did not want to be interrupted. The Sessions Judge at this stage also drew the attention of the Defence Counsel to the prosecution witness's statement.

Mr. Asaf Ali: Now if it is suggested that a case was pending against the accused under Section 32 of Jammu and Kashmir Defence Rules, I have a right to say that a bare statement of the complainant would not prove it. He produced no proof that a case of this nature was pending against the accused. Is any documentary proof of this case on record? I maintain that it was purely an afterthought with which the erring Superintendent of Police sought to cover his unlawful act. This is as far as the arrest is concerned.

SANCTION INVALID

Now we come to another point to see whether the so-called sanction is a legal one.

That is a very important point because after all, all cases which are protected by Section 196 of Criminal Procedure Code are really matters of State and they touch higher points of policy. Section 196 of the Criminal Procedure Code is intended to take out of the hands of hasty executive the initiation of cases in which higher policies of State may be involved, and, therefore, it has been said that no court shall take cognizance of any case of this nature. Let us see what the actual words of the Section are. Now Sir, these are the words of the Section. I especially invite your attention to the amendment which was effected recently. The words of Section 196 Criminal Procedure Code of Jammu and Kashmir are: "No court shall take cognizance of any offence punishable under Chapter VI or IX-A of the Ranbir Penal Code (except Section 127), or punishable under Section 108-A, or Section 153-A, or Section 294-A, or Section 505 of the Ranbir Penal Code, unless upon complaint made by order of, or under authority from (*the Government*) or some officer empowered by (*the Government*) in this behalf." Previously the words "His Highness" appeared where the words "the Government" appear now. It is an exceedingly important point; and I shall show you that the sanction is completely invalid; and you cannot possibly take any action on it. We have to find out what

exactly the word "Government" means ; for it certainly does not mean the Premier, or His Highness, or His Highness and the Premier put together. The only definition of "the Government" is to be found in the General Clauses Act, according to Section 3 Sub-Section 15 of which "Government" or "the Government" shall mean "Government in Council" as defined in Regulation of 1991. If that is the definition of "the Government" I maintain that any sanction which does not on its face bear the sanction of the Council is invalid even if it is countersigned by His Highness. That is the legal position and the History of this sanction too is really very amusing. If you just refer to the document in question, you will find that it is signed by the Premier, underneath whose signature appears in type the word "confirmed" and below the word "confirmed" certain initials ; below which is written "His Highness." Now, Sir, you will appreciate that His Highness is scarcely an adequate description. I say this with due deference to His Highness the Maharaja Bahadur of Jammu and Kashmir. I am only looking at it from a legal point of view. What indecent haste and what an illegal sanction for this prosecution ? And to what purpose and to what end, without weighing all the repurcussions and consequences ? We do not know whether we have seen the last

of the repercussions yet. Another interesting point about that is below the Maharaja Bahadur's initials appears a note, which is very important. It is: "In view of urgency the order has been issued in anticipation of confirmation by His Highness." Now, Sir, that shows that the Sovereign of the State was totally unaware of what the Prime Minister was doing at the time.

At this stage the Court intervened and pointed out that the sanction was "by order in council." Mr. Asaf Ali pointed out that as His Highness was not there the Council was not complete. "In any case I am still maintaining that all this was done in anticipation of His Highness's confirmation. Now, Sir, I am prepared to say with great respect to His Highness that the order reduces him to a cipher. It means that the Prime Minister can assume whenever he pleases that his order is bound to be confirmed, otherwise he would have waited for His Highness's order. In a case like this where was the hurry? It would not have imperilled the State if Sheikh Abdullah had been allowed to go to Delhi. He was bound to come back sooner or later. It was not a case of a murderer trying to escape, whose apprehension was urgently called for. The prosecution for sedition could easily be launched at any time. Where was the necessity for such a great hurry?

DERELICTION OF DUTY BY PREMIER

It is obvious that the Premier, as the accused has said in his statement, had initiated a certain policy as soon as he came to the gadi of authority of alienating the people. A series of meetings had been commenced in the absence of Sheikh Abdullah and before his speeches at which the Premier was being charged with very serious dereliction of duty. Even a public demand was put forward that an independent enquiry should be held into the conduct of the Premier and it was in view of the fact that these charges were floating in the air, without any attempt by the Premier to contradict or challenge them that the Premier thought that now was his opportunity to push the whole matter into the shade by bringing His Highness into the controversy and after the launching of this case the charges against the Premier went into the background. It was, it appears an astute and shrewd move to draw a curtain over his own public indictment. As soon as this arrest of Sheikh Abdullah was effected all the charges against the Premier just vanished in the thin air. The next day they were nowhere to be found ; nobody had the time to think or talk about them ; and nobody has revived the demand for an enquiry into the conduct of the Premier since. The Premier inspite of all the serious allegations

against him has gone out of the picture and His Highness has been brought to the forefront. Now this is the genesis of the hasty sanction. That is why the Premier was not prepared to wait for another day or two for a calm consultation with His Highness. He should have laid the case before His Highness and said "Now Sir, these are the facts and these are the possible consequences which may follow such an action, and yet if Your Highness feels that steps should be taken, of course, they shall be taken." His Highness would then have weighed carefully and calmly all the consequences and would have passed necessary orders. Instead of doing this the Premier just signed the order in anticipation of his confirmation and plunged the State into turmoil.

At this stage the Sessions Judge intervened and said that this order was issued by the Secretariate and he had no doubt about its validity.

Mr. Asaf Ali replied that he would like to see the proceedings of the Council, and they ought to be produced. The Premier who assumed that his Highness would confirm the order could easily assume that the Council would also confirm it. There was nothing to stop him from assuming this. It should be in writing in the regular proceedings of the Council and they should be produced and

proved in the regular course. I concede that it is a matter for your presumption. In fact it is your duty to presume it until it is impunged. If I call its genuineness into question, you must insist on regular proof.

LEGALITY OF JURISDICTION

Now, Sir, I come to my next point which is about the complaint itself. In so far as the complaint is concerned I am not suggesting that the complaint is not one that cannot be called a complaint, but it is not legal for you to take cognizance of it. This point was raised right in the beginning by my colleague in my absence and I repeat it now.

At this stage the prosecution intervened and pointed out that this point was discussed at length right in the beginning of the case and a ruling was given.

Mr. Asaf Ali :—I am saying, Sir, that this point was raised before you. I do not wish to argue it at length. I am only reminding you of the fact that this point has not been abandoned. The definition of complaint according to Section 41 (e) is as follows: "A complaint means the allegation made orally or in writing to a Magistrate with a view to his taking action under this Code, that some person whether known or unknown, has committed an offence but it does not include the report of a police-officer". According to the law of the State

it is obvious that only a Magistrate could take cognizance of a complaint, Now. Sir, by no stretch of imagination can you be called a Magistrate. Even though it is true that a special notification was issued in respect of sedition cases sometime ago. That special notification still stands. The general procedure laid down under the Criminal Procedure Code that these cases shall go for committal to a Magistrate first has been altered to this extent that cases of sedition shall be tried by a Sessions Judge as if they were warrant cases. But you cannot import new meaning into the word "complaint". This notification should also have amended the definition of complaint. It should also have said that a complaint of sedition shall be taken cognizance of by a Sessions Court. Since it does not say so, it is a *lucunae*, and you cannot get over it. You cannot presume that such an amendment has been effected or that it can be taken to have been made merely because a Sessions trial is made triable as a warrant case. That gap is still there. Therefore I still maintain that you could not have taken cognizance of this case. The notification to which I have referred is 13 of 1931. It alters the procedure only to the extent that it authorises the Sessions Judge to try a case of sedition as a warrant case. In the definition of complaint under Section 41 (e) the word Magistrate should have been amended to read

Sessions Judge. Until this is done your right to take cognizance of the case does not come into existence.

“GOVERNMENT BY LAW”
and
TREATY OF AMRITSAR
QUESTIONED

Now let us come to the next point, Sir, Let us look at the specific section under which the accused is being tried. This is how the Section runs. “Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards His Majesty or His Highness or the Government established by law in British India or in Jammu and Kashmir State, shall be punished with imprisonment for life to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added or with fine”. If the Section means the Government of Jammu and Kashmir established by law, I think I am entitled to ask to which law it refers. Probably the Constitution Act of 1934 of Jammu and Kashmir is the law referred to in this Section. If that is so, Sir, I once again with great respect to His Highness the Maharaja Bahadur, must observe that the Constitution of 1934 was not framed by the

representatives of the people. It was a kind of order passed by His Highness. It means that the source of that law is to be found in the inherent powers of the Ruler and these inherent powers again go right back to 1846 when the territory of Kashmir was transferred to Maharaja Gulab Singh by the East India Company. The East India Company was at that time a public concern but not a Government in India, and only in 1858 according to an Act of the British Parliament did any constitution come into existence in India. No reference is made in that Act or the Act of 1862 to the Treaty of Amritsar or any Treaty. The Acts of 1858 and 1862 are the real source of the law by which the Government of India has been established, but this particular treaty as far as I am aware is nowhere mentioned in these Acts, and if that is so then the very basis of the law to which reference has been made becomes highly questionable. Again, if it is the Treaty of Amritsar on which the inherent right or the inherent power of the Ruler rests then there is one article of the Treaty, namely Article 3 of the Treaty which vitiates the whole Treaty in view of International conscience, because that article reads as follows: "In consideration of the transfer made to him and his heirs by the provisions of the foregoing article Maharaja Gulab Singh will pay to the British Government the sum of seventy-five lakhs of

rupees (Nanakshahi), fifty lakhs to be paid on ratification of this Treaty and twenty-five lakhs on or before the 1st October of this current year, A.D. 1848." According to this Article the territory of Kashmir was transferred by the East India Company for the consideration of a sum of money. Now, before that the civilised world had abolished the sale of human beings. If the authority of the Ruler to make laws cannot be derived from this Treaty, the real authority resides in the people and in nobody else, and that is the whole burden of the accused's speeches. Nobody suggests that His Highness should disappear from the soil of Kashmir, but it is maintained that the basis of relationship between the people and the ruler should be the will of the people which is the bedrock which will never change, whether the British Government stays here or not. The British Government may be here to-day; and the treaties may stand; but when they quit the treaties will disappear. The Treaty does not offer solid ground and relationship between the Ruler and the ruled must be placed on a secure basis. That is the whole point, and therefore, Sheikh Sahib's speeches far from being the subject matter of a criminal charge should be considered *a great service that any-one could render to the people of the State and the Head of the State*. Only the other day in the statement of the 16th May last what did

the Cabinet Delegation say about Paramountcy? Paramountcy it said was going and it would not survive the end of British Rule. What will happen to the treaties when paramountcy ends? Are you going to have chaos? You must have a secure and stable law and only that law is sound which the people accept; which the people make themselves. I have glanced at this point which can be successfully argued anywhere, and as the accused has himself said in his speeches, Sir Shah Suleman one of the judges of the Federal Court and a Chief Judge of the Allahabad High Court had considered these points and had collected a lot of material to substantiate them and when reference is made to Iqbal's poetical dictum it should be remembered that he has said nothing more than thinking men have held from time to time; saying this is not disloyalty, it is not a revolt; it is not seeking a disturbance of the present state of society. It is pointing out what any thinking man would say in the best interest of the State. The whole constitution of the State if it is to endure should be based on the soundest ground possible. This is indeed the essence of the speeches and there is no other suggestion in them. I shall be able to show it to you that there is no suggestion that His Highness should disappear from the scene altogether. There is no such suggestion.

ONLY AUTOCRACY IS ATTACKED

It is only Autocracy that is attacked. If you refer to "Quit Kashmir" the whole burden of that document is that they want complete freedom from *the autocratic Dogra House*. The emphasis is on "autocratic". If you refer to Section 5 of the Constitution Act and see what it says you will realise that Autocracy is fully retained by it. It says: "Notwithstanding anything contained in this or any other Act, all powers, legislative, executive and judicial, in relation to the State and its Government are hereby declared to be and to have always been inherent in and possessed and retained by His Highness or be deemed to have affected the right and prerogative of His Highness to make laws, and issue proclamations, orders and ordinances by virtue of his inherent authority". No Constitutional Head in his individual capacity could be said to have such inherent authority. In the constitutional law of the world's nations no such thing is known to-day. There was a time when divine right could be claimed by Kings. Divine right has long ceased to exist. Not a soul exists in the whole world to-day who would make such a claim. There are very few crowned heads left in the world; but these monarchs are not talking about divine right. They are not talking about inherent rights in the face of 200 million

people who have become conscious of their inherent power and their fundamental rights. To-day the only right that is recognised is the right of the people who work; who labour; who produce wealth; who create and modify the structure of society and who say "let there be a reasonable structure of society where both you and we can live happily together and don't let there be discrimination and disparity." There is no other right left except the atom bomb which will be buried by the order of human conscience sooner than later. Anyway there is no atom bomb here, of that we are perfectly certain. Only the will of the people shall prevail everywhere, which is the only "inherent sanction" of all laws. Any monarch or constitutional sovereign who belongs to the people and who derives his authority from the will of the people is secure to-day; nobody can touch him; for he becomes a symbol of power, a symbol of law, a symbol of the aspirations and emotions of the people and the people love him and the people want to safeguard him. I have said all this, Sir, only to question the word "law" in Section 124-A and this is exactly the stand which the accused has taken all along. But let me not stay here. Let me proceed to examine the validity of the application of Section 124-A within a narrower sphere. I have been referring to the fundamental and international

aspect of the whole question. Now I wish to come back to the narrower sphere. Now, Sir, before I do that, let me first of all preface my remarks by one of the most enlightened statements by a ruler as regards his intentions, and fortunately this statement was made by no less eminent a person than His Highness the Maharaja Bahadur Harisingh of Jammu and Kashmir. I would request you to bear this in mind. I will read the whole of it and I shall emphasise the points to which I want to invite your attention. This statement was issued by His Highness in March, 1942, when Sir Stafford Cripps was engaged in his negotiations with the political parties of India. His Highness says. "We have yet to learn the conclusions at which His Majesty's Government has unanimously arrived (under the combined stress of British India's well-known demands, and the requirements of the war situations) to satisfy the legitimate aspirations of all interests".

His Highness was not quite sure of the decision of the British Government at that time but now the British Government has announced that India must be free and paramountcy must go. This change has taken place since the statement was made. He then says: "On the part of the states—a considerable factor in the Indian polity and an important party to be satisfied—there has

been a tendency, even within recent weeks, to give prominence to the credo of 'relations to the Crown,' His Highness even at that time had wisely realised that this credo was no good. He continues: "These relations have so far been maintained through and effected by a department set up by the will of the Crown, the policy and practice of the department being determined by the Crown's functionaries. Logically, therefore, it would seem that the Princes cannot object to having dealings with a Central Government of India which the Crown may continue."

Now, Sir, this is an exceedingly far-sighted observation. Among other things it proves that the people living in the States are slaves of slaves. His Highness recognised that the sovereignty of the States," was illusory. His Highness admits that this sovereignty is a huge joke and that the policy and the practice of the State is determined by the functionaries of the Crown and therefore you become their slaves and therefore, those who are not allowed to exercise their will to make laws become slaves of slaves. This is exactly what the accused says. It is what the whole of India is saying to-day. If you want to read any books on the subject read Edward Thomson's illuminating book dealing with the creation of Indian States by the British. The statement continues. "Nor

have they any reason to assume that they would not get a square deal from such a Government."

I can assure the States that the Princes and the people of the States shall get a fair and square deal from such a Government. Logically enough His Highness further says "In any case, it is the duty of the Princes to show they are *patriots* and that they desire that their country-men should feel themselves the equals of nationals anywhere in the world." With these noble words of His Highness about the Indian nationals before me, I have a right to ask "Sir, what about the Kashmir nationals?" Should there be discrimination so far as the State army is concerned among Kashmir nationals? Should they be debarred except a small section, from possessing arms? Should they remain dependents of Jagirdars? I am entitled to ask all this. All that I have ever said in my speeches is only prompted and confirmed by what His Highness has said. What His Highness said 4 years ago was not merely in respect of Indian nationals but it should apply to Kashmiri nationals also among themselves. He then goes on to say "The Princes are justified in assuming that in a self-governing India every *autonomous* unit will share equally the fiscal and financial advantages accruing in such an India, as well as the responsibilities and burdens entailed

by the maintenance of peace and order and the provision of beneficent services and public utilities in the territories administered. And it should not be forgotten that these territories may have problems peculiar to their populations as well as to their physical conditions." I want your honour to make a special note of the word "*Autonomous*" here. Does it or does it not mean that His Highness was thinking of the autonomy of the States people? Autocracy is inconsistent with the very conception of autonomy. Autocracy is just the opposite of autonomy. Every autocrat, according to Aristotle, is a tyrant. His Highness is not thinking in terms of tyranny. How can a state be autonomous when the people are deprived of their rights; when the ministers of their States are not responsible and answerable to them? Responsible Government is again, Sir, the greatest safeguard of a Ruler. He does not know the difference between parties, and ministers come and go as the parties win majorities. It is the ministers who are responsible to the people and the people can kick them out when they cease to respond to the people's needs, while the Ruler remains impartial. This is the reason why the British King is still there and he is a most loved sovereign in the United Kingdom for the simple reason that he does not take part in politics. He exercises his prerogative on the advice of his

ministers. His Highness says "In the India of tomorrow such of the Princes' prerogatives as enable them to afford a better life to their subjects and to ameliorate their lot, must remain. Other privileges are of comparatively small account when set beside consideration such as the safeguarding of resources necessary for *up-to-date Government* and the relief of burdens borne by the States alone."

DEMAND FOR UP-TO-DATE GOVERNMENT

I entirely agree. Yes, this is exactly what the accused is asking for,—an up-to-date Government. You can retain these powers, but not on the basis of the Treaty of Amritsar. The accused says on behalf of every Kashmiri "I am a human being; I am not a saleable commodity; your relationship with me must be the relationship of humanity based on man's rights and obligations. Every privilege is a burden. I assure you, Sir, that nobody would be happy under the sun of Kashmir until the up-to-date Government His Highness envisages in his pronouncement is translated into a reality. His Highness continues "In promising to support the proposals brought by Sir Stafford Cripps, the Chamber of Princes added the proviso that support would be without prejudice to the right of individual States to lay their case before him and generally without pre-

judice to the inherent rights of the States. These rights it is not easy to define or catalogue when one considers the effect of political practice inaugurated in 1860 and since maintained with the aid of "usage and sufferances."

His Highness sagaciously enough knew the weakness when he said these rights are not easy to define. But he goes on "In any case, there is a piquant irony in the contrast between the Prince's reiteration of the phrase "treaty rights" and the Viceroy's suggestion that all Princes, for certain purposes, should voluntarily abdicate in favour of the political officers accredited to their courts." What is His Highness referring to here? He is referring to the whittling away of the powers of Rulers of States. They have been whittled down in more than one respect. What a contrast from the day of Maharaja Gulab Singh when no British resident could possibly live here. Today we have the spectacle of the British Resident being consulted on all important occasions. Is it not a whittling down of the much stressed inherent powers? Would you have this and be pulled from behind without anybody knowing anything about it, or would you have real authority from your people? This is what the accused was trying to point out when he referred to slavery within slavery. He said in effect "you

yourself can become a real Sovereign if you derive your "inherent powers" from the people. The talk about the treaty of Amritsar hurts our national dignity. Do not talk about treaties ; for if you want to be our Head, we must place you at the head of full responsible Government." This is what the accused has said for which he is charged for sedition. The next sentence of His Highness's statement runs as follows :—

" When at the Round Table Conference the Princes assented to the working out of a Federal constitution, they were prepared voluntarily to delegate some of their sovereign powers to a Federal Government. In the India of the future it is possible that the matters committed to the Central Government will be far fewer than those recited in the table of federal matters appended to the Act of 1935."

" Unless there the proposals entrusted to Sir Stafford Cripps are fundamentally adverse to the interests of the Indian States—and this is unthinkable—there is no reason why there should not be ample common ground between the States and the rest of India." " *Freedom* " His Highness concluded, " *must be our watchword—freedom from crippling restrictions and strangling control, freedom from the subordination of India's interests to the interests of other parts of the Commonwealth* ".

Now these are memorable words. This is what His Highness says. What noble words ; what enlightened sentiments ; words which really inspire people with new ideas, but unfortunately these new ideas are sought to be nipped, strangled, and crushed by a ministry which feels endangered by the enunciation of these principles. Sir, I assure you it is not a happy spectacle ; and it is a painful task for me here to have to plead with His Highness's Government not to soil its hands with a prosecution of this nature. It is nothing short of the proof of utter want of freedom of legitimate criticism, under a Government which has become rigid to the core. It has got to be changed. It is bound to be changed. It cannot remain what it is. If it is to endure it must be based on the sound bedrock of the people's will. Now, Sir, with these noble words still ringing in my ears and in your ears I now invite your attention to some of the principles by which a case of sedition is to be judged. The very first principle that I should like to put in the forefront, and which was enunciated many many years ago by Mr. Justice Shah in the well-known case of Balgangadhar Tilak, and later on upheld by various High Courts from time to time, which still holds good to-day is this : " The speeches must be read as a whole 'in a fair, free and liberal spirit.' In dealing with them one 'should not pause upon an

objectionable sentence here or a strong word there'. They should be dealt with 'in a spirit of freedom', and 'not viewed with an eye of narrow criticism.' The case should be viewed 'in a free, bold; manly and generous spirit' towards the petitioner."

That I hope will be borne in mind by the Assistant Advocate General also. Pausing upon some sentences is not the way to judge the effect of the speeches. This principle has been upheld by your own Board of Judicial Advisors in a very recent judgment, in the case of Premnath Bazaz. I shall only refer to the appropriate and relevant portion of this judgment. It says. "In considering the articles in question in the light of the above judicial pronouncements, it is necessary to remember the words of Fitz Gerald J. in Reg. Vs. Sullivan that they should be dealt with "in a fair and liberal spirit not picking out an objectionable sentence here or a strong word there or giving an undue importance to inflated and turbid language but looking at the real intention and spirit of the article." (11 Cox Cr. Ca. 59, 14 Cal. 36 page 41). *It is also to be remembered that mere abusive epithets, declamations, invectives, turbid language will not necessarily bring the writing in question under condemnation.* What really counts is whether on a perusal of the articles as a whole one can come to the conclusion that

they have the tendency to create a feeling of hatred or contempt or disaffection against the Government, established by law, in the mind of the ordinary average man who reads the newspaper”.

These are the principles which have to be borne in mind while we consider the tenor, temper and trend of the speeches and naturally their effect will be deduced from reading the speeches as a whole. Distorted versions, or sentences torn out of their context should never be relied upon when trying persons for sedition. Then, Sir, I think I cannot do better than read a little more out of the Federal Court's ruling to which I referred earlier in the day so that the entire position of the law of sedition may be made perfectly clear and my task of examining and analysing the speeches of the accused may be facilitated. This is a fairly longish quotation but I think I should read the whole of it. Their Lordships say. “The words, as well as the acts, which tend to endanger society differ from time to time in proportion as society is stable or insecure in fact, or is believed by its reasonable members to be open to assault. In the present day, meetings and processions are held lawful which 150 years ago would have been deemed seditious, and this is not because the law is weaker or has changed, but because, the

times have changed, society is stronger than before" (Lord Sumner in 1947 A.C. 21 406' at p. 466). The right of every organised society to protect itself against attempts which have seemed grave to one age may be the subject of ridicule in another. Lord Holt was a wise man and a great judge; but he saw nothing absurd in saying that no Government could subsist, if men could not be called to account for possessing the people with an ill-opinion of the Government; since it was necessary for every Government that the people should have a good opinion of it. Hence, many judicial decisions in particular cases which were no doubt correct at the time when the mere criticism of Governments was sufficient to constitute sedition, for it is recognised that the right to utter honest and reasonable criticism is a source of strength to a community rather than a weakness. Criticism of an existing system of Government is not excluded, nor even the expression of a desire for a different system altogether. The language of Section 124-A Penal Code, if read literally, even with the explanations attached to it, would suffice to make a surprising number of persons in this country guilty of sedition; no one however supposes that it is to be read in this literal sense. The language itself has been adopted from English law, but it is to be remembered that in England the good sense of jurymen can always correct

extravagant interpretations sought to be given by the executive Government or even by Judges themselves ; and if in this country that check is absent, or practically absent, it becomes all the more necessary for the Courts, when a case of this kind comes before them, to put themselves so far as possible in the place of a jury, and to take a broad view without refining over much in applying the general principles which underlie the law of sedition to the particular facts and circumstances brought to their notice. What then are these general principles ? We are content to adopt the words of a learned Judge, which are to be found in every book dealing with this branch of the criminal law: "Sedition . . . embraces all those practices, whether by word, deed or writing which are calculated to disturb the tranquility of the State and lead ignorant persons to subvert the Government. The objects of sedition generally are to induce discontent and insurrection, to stir up opposition to the Government and to bring the administration of justice into contempt ; and the very tendency of sedition is to incite the people to insurrection and rebellion. Sedition has been described as disloyalty in action and the law considers as sedition all those practices which have for their object to excite discontent or disaffection, to create public disturbances, or to lead to civil war, to bring into hatred or contempt

the sovereign or Government the laws or the constitution of the realm and generally all endeavours to promote public disorder” (Fitzgerald J. in (1868) 11 Cox. C. C. 54³ at page 55).

“It is possible to criticise one or two words or phrases in this passage; “Loyalty” and “disloyalty”, for example have a non-legal connotation also, and it is very desirable that there should be no confusion between this and the sense in which the words are used in a legal context; but, generally speaking, we think that the passage accurately states the law as it is to be gathered from an examination of a great number of judicial pronouncements. The first and the most fundamental duty of every Government is the preservation of order since order is the condition precedent to all civilization and the advance of human happiness. *This duty has, no doubt, been sometimes performed in such a way as to make the remedy worse than the disease*; but it does not cease to be a matter of obligation because some on whom the duty rests, have performed it ill. It is to this aspect of the functions of Government that in our opinion, the offence of sedition stands related. It is the answer of the State to those who, for the purpose of attacking or subverting it seek (to borrow from the passage cited above) to disturb its tranquility, to create public distur-

bance and to promote disorder, or to incite others to do so. Words, deeds or writings constitute sedition, if they have this intention or this tendency; and it is easy to see why they may also constitute sedition, if they seek, as the phrase is, to bring Government into contempt. *This is not made an offence in order to minister to the wounded vanity of Government* but because where Government and the law ceased to be obeyed because no respect is any longer for them only anarchy can follow. *Public disorder*, or the reasonable anticipation, or likelihood of public disorder, is thus the gist of the offence. The acts or words complained of must either incite to disorder, or must be such as to satisfy reasonable men that that is their intention or tendency."

"Such appear to be the broad principles underlying the conception of sedition as an offence against the State, and it is obvious that occasions may arise when it will not be easy to draw a distinction between certain aspects even of a constitutional agitation and acts which are admittedly seditious. The Courts, however, know no such thing as a political offence, as it is some times called, and must administer the law as they find it. There will always be border line cases where the line between what is lawful and what is unlawful is hard to define; but we believe

that, if the essential principles which we have sought to enunciate above are borne in mind, and if the Courts, as we have suggested, assume in part the functions of jurymen when they hear these cases, they will generally be able to come to a decision not only in harmony with the true principles of the law, but also not obnoxious to commonsense and the circumstances of the time. And in holding the scales evenly between Government and citizens they will be forgetful neither of the obligation of the one towards the public at large nor of the individual and private rights of the other ; for the preservation of order is a thing in which all citizens have an interest no less than in the maintenance of freedom of speech and the right to criticise all matters of public interest."

"Quit India" if uttered 10 years ago in India would have earned probably a fairly longish sentence. "Quit India" today is the staple food of our children. Political awakening would be meaningless if such a slogan were still seditious, as it was originally explained by Mahatma Gandhi himself.

At this stage the Sessions Judge asked Defence Counsel to explain "Quit Kashmir" in the light of "Quit India." Did not "Quit Kashmir" mean the same thing as "Quit India"? Mr. Asaf Ali answered: "It never meant the physical elimination of any individual.

Even "Quit India" never meant that every Englishman was to remove himself bodily from the Indian soil. It only meant that the foreign rulers of India should relinquish and transfer authority and power to the people of India. Here the Ruler is not a foriegner and therefore "Quit Kashmir" means that he should relinquish autocratic authority and transfer to the people the power to rule themselves with him as the symbol of authority. Referring to the prosecution Mr. Asaf Ali said that in so far as rulings were concerned the prosecution were probably banking on rulings which went right back to the earliest days of British rule. But all of them had become out-of-date dumps and no more. "The ruling which I have just read" he said, "is the law on the subject," continuing he added "Nor a desire for a different system of Government is sedition. It is a perfectly legitimate and resonable demand "New Kashmir" is the basis by which the accused swears."

Here the Sessions Judge said that "New Kashmir" was published two years ago and he did not see how with "Quit Kashmir" Counsel could still talk about "New Kashmir" Mr. Asaf Ali said : "Unfortunately there is a great deal of misunderstanding about "Quit Kashmir." Let us take up "Quit Kashmir" even at this stage. Here are the guiding sen-

tences : " Today the national demand of the people of Kashmir is not merely the establishment of a system of responsible Government, but their right to absolute freedom from the *autocratic* rule of the Dogra House." The national demand is not the extinction of the Dogra House, but the relinquishment of autocratic powers. Emphasis is on the word " autocratic." A responsible system of Government with Dogra House is conceived here. It says : " We challenge the moral and political validity of this sale deed, to which the people of Kashmir were never a party, and which has since 1846 been the document of their bondage." You cannot find fault with that expression. It goes on to say : " At this moment, the future of the inhabitants of India is on the anvil, and the constitutional pattern of the future is being hammered out by the British Cabinet Delegation. The question of the Treaty rights of the Princes has become a moot point between the peoples of the States, the Princely Order, and the Paramount Power. For us in Kashmir the re-examination of this relationship in its historical context is a vital matter." This is history and in this context it is natural that we should have full responsible Government and not autocracy based on an obsolete Treaty or rather a discredited sale-deed. The most important sentence comes last. The rest of the pamphlet deals

with grievances. What is the concluding sentence? What did they demand after all? The demand is contained in para. 2 on page 16. "Thus at a time when the new world is being built on the foundations of the Atlantic Charter a new perspective of freedom is opening before the Indian people. The fate of the Kashmiri nation is in the balance and in this hour of decision *we demand our basic democratic right to send our elected representatives to the constitution-making bodies that will construct the framework of Free India. We emphatically repudiate the right of the Princely Order to represent the people of the Indian States or their right to nominate their personal representatives as our spokesmen.*" Their only demand was that representatives should go to the Constituent Assembly. Is there anything wrong about it? This demand is made on behalf of the people of this State and also on behalf of the people of the other States, and this at a time when the British Cabinet Delegation was holding discussions about the future of India which included Indian India. After reading this can you come to any other conclusion? This is a purely constitutional, strictly legitimate and eminently sensible and reasonable demand. "Quit Kashmir" is about the most sensible document which could flow from the document "New Kashmir." It is only a memorandum which has been addressed to

the Paramount Power, about the relationship of the ruler and the ruled.

Before we rose for lunch I had just finished referring to "Quit Kashmir" and "New Kashmir" in the course of my arguments, but as a matter of fact I was dealing with the principles of law as laid down by the Federal Court for the guidance of all Courts. The Board of Judicial Advisors of this State have already considered this judgement and followed it and they rely upon it in their latest judgement.

As you will notice, Sir, their Lordships are not unaware of the fact that even judges and the executive can take an extravagant view of isolated words. This case is a particular instance of the executive seeking to put an extravagant interpretation upon the accused's speeches.

The judgement says: "This duty has, no doubt, been sometimes performed in such a way as to make the remedy worse than the disease." This is exactly the case as far as this trial is concerned. The remedy which has been resorted to has had repercussions of a very serious nature and I fear the repercussions which are still in store are likely to be such as cannot be predicted today and therefore the remedy is infinitely worse than the disease. The judges go on to say: "But it does not cease to be a matter of obligation

because some on whom the duty rests have performed it ill." I maintain in this particular instance it has been ill-performed. It has done no service to the sovereign of Jammu and Kashmir. Further the judgement says: "This is not made an offence in order to minister to the wounded vanity of Governments." These are vital words. Before I proceed any further, I may remind you that right in the beginning while I was making a few prefatory remarks I observed that this case would have ended within about a week or even less time if the prosecution had not after reading this judgement and after having found that their case could not possibly stand on its own legs, attempted to introduce into it a lot of material relating to the disturbances which took place after the 20th which had nothing to do with the speeches whatsoever. It was an entirely and absolutely ill-conceived and ill-advised action taken by the Government. By suddenly arresting Sheikh Abdullah they precipitated a situation which was naturally followed by meetings of protests the very first of which drew fire upon the people inside a sacred shrine. And that lit the fire of indignation throughout the city and later as news spread further elsewhere too, e.g., Anantnag, Pampur, etc.

Session Judge: "*But they gathered their for some political object.*"

Mr. Asaf Ali: *"But should human life be held so cheap?"*

Sessions Judge: *"But the crowd pelted the police and the military with stones and they would not disperse in spite of warnings."*

Mr. Asaf Ali: "I am referring to it in passing. I shall examine the whole of that affair later on. The evidence that has been led is entirely false. They were provoked from the moment the mosque was entered by the military. And in any case that affair constitutes a different and separate chapter which has nothing to do with the speeches of the accused. It followed the arrest of the accused and to connect it with his speeches would be what in logic is known as the fallacy of "post hoc propter hoc." At this stage I am not examining that incident but only reading to you the Federal Court's judgement. My whole point is that with this judgement in front of the prosecution they did not feel strong enough to rely only on the speeches and to conclude the whole case on the basis of the speeches. The tendency to incite to disorder must be found in the words uttered by the speaker. The disturbances that took place afterwards in consequence of some other incident form a separate chapter altogether. If that were not so the consequences of the accused's speeches could be traced right down to Madura. When Pt. Jawaharlal Nehru was

arrested because he wanted to attend this case spontaneous meetings and processions in protest were held all over the country. In Madura the protest lasted 3 days and during that protest certain incidents took place resulting in the loss of 7 person's life. Are we going to say that the result of Sheikh Abdullah's speeches was that 7 persons were killed in Madura?

Sessions Judge : *"What about the scuffle of 17th?"*

Mr. Asaf Ali : "Do you mean to suggest Sir, that in a big city like Srinagar where there are several political organisations some of which happen to be inimical towards others any scuffle between some persons would mean a 'disorder' resulting from Sheikh Abdullah's speeches. There are definite opponents and opposing camps here. Do you mean to suggest that nobody can quarrel in this State except as the result of speeches made by the accused? If the accused had said: 'Now, gentlemen, go and belabour so and so' and these gentlemen afterwards went and did it it would be another story. If somebody takes into his head to shout slogans in my lane to provoke me, a quarrel may follow. In this instance a certain number of young students went into hysterics in Fateh Kadal, where they had no business to go and provoked a quarrel of their own. How can you

hold my speeches responsible for this occurrence? You must prove that the words uttered by me were intended to create a public and not a private disturbance. You cannot put any two incidents side by side with my speeches and hold me responsible for every private quarrel. This is a glaring fallacy, which in logic is called 'post hoc propter hoc.' I shall show you later on how I isolate these three chapters.

Before the 20th it was calm and quiet. According to your own evidence it stands proved. I may even at this moment point out to Press Note No. 81 (D.C/1) which has been issued by the Government themselves. And this is what it says: "Sheikh Mohammed Abdullah and several of his colleagues were arrested on the 20th May, 1946, *following* a series of speeches delivered by him and his followers, which the Government considered objectionable, and a number of his followers were rounded up soon after. *This was followed by disturbances in the city and elsewhere in the valley.*" This was issued on the 23rd June after careful and due deliberation. Now who can view of the doubt after this Press Note that even in the Government whatever took place after the 20th was the result of Sheikh Abdullah's arrest. This is the beginning. Now I would refer to the examination-in-chief of Allaudin, the C. I. D. reporter, P. W. No. 4 He is one of the most glaringly anti-accused witness

and what did he say ? This is what he says :
 "NATIONAL Conference ki Halqa Committiyon ke jalse honeshuru hogaye. Uswaqat fiza *calm* thi." This was after the series of speeches had come to an end after a halt had been called to the speeches. Now, Sir, let us come to Rampal, Magistrate, P. W. No. 3. He is a sensible Magistrate and by no means inclined to favour the accused. This is what he says : "*Aur yeh bhi khiyal tha ki Sheikh Mohammed Abdullah ki giraftari in halat men honewali hai aur tahrik yakayak bharkegi jokenaqabil qabu hogi jesaki doosre din huwa.*" Now, Sir, let us see what P. W. No. 26, Mr. Jialal Darbai, A. S. P., C. I. D., the promotor of the case has to say. After having been examined at great length he was asked what exactly the accused wanted to do ? "Mulzim ne apni taqriron men kaha ki ham ko chanda jama karna chahiye taki 75 lakh rupya jama karke Maharaja Bahadur ko diya jaye ki woh Kashmir chorde aur mazidbaran chanda isliye bhi jama karna chahiye ki Amritsar ke ahadname ko mansookh karaya jawe ya uske bare men case fight out kiya jawe. Amritsar ke ahadname ko chornama mulzim keh raha tha. Halqa committiyon wale chanda jama kartethe. Mere reportoron ki bhi yahi information hai joken men ne bayan ki hai. Chanda 6 May se bad azan tak jama hota raha." He does not suggest anywhere that he asked any of the audience to resort to violence. That is

so far as your own evidence is concerned. The effect of the speeches according to this witness was nothing more than that. Branch Committees began to act but they were only collecting money for the purpose of fighting out the Treaty case in the U. N. O. if necessary and all the rest of it. Would that mean that these speeches were intended to incite any one to violence? This is in answer to your remark. But I must request you to remember that it is in the light of the principles of the law of sedition to which I adverted earlier in the morning that you should follow the speeches of the accused in full, and as I read them I wish to comment on them from time to time. It is by going through the entire speech that you can come to the real object, the real purpose, and the real tendency of the speech. If you tear sentences out of their context and place them side by side, nothing but a fantastic situation will arise. I can assure you that I can take words and sentences from the holy scriptures if you like and prove that they are seditious. To tear words out of their context is simply to pervert the sense. That is exactly what has happened in this case. Let us go on to the speeches themselves. In view of what I have said this morning and this afternoon I must once again invite your attention to the fact that political awakening is an organic growth. Just as human beings are living realities, political awakening is also

a living reality. It grows from time to time. Political consciousness in India and in Indian States has grown very rapidly. The Press and the Radio have made it possible for human beings to read and hear the most liberal of views and the most advanced opinions entertained by Americans, Englishmen and Russians and from any other part of the world. Here in Srinagar if you walk along the Bund you can hear the radio blaring forth how such and such country is demanding freedom, etc. Walk from one end to the other and you will find these radios blaring forth words stimulating political awakening in Kashmir. Sir Albion Banerjee quitted Kashmir sometime in 1929 and he kept quiet until he reached Lahore and quite right too.

Nobody would care to give out his views at a time when these views may not be palatable, and which might bring the law into action. Therefore, Sir Albion when he was out of the territory gave out his views on the 15th March, 1929. He says as follows :

“ Jammu & Kashmir State is labouring under many disadvantages, with a large Mohammadan population absolutely illiterate labouring under poverty and very low economic conditions of living in the villages and practically governed like dumb, driven cattle. There is no touch between the Government and the people, no suitable opportunity for

representing grievances and the administrative machinery itself requires overhauling from top to bottom to bring it up to the modern conditions of efficiency. It has at present little or no sympathy with the people's wants and grievances." Now, Sir, from that moment you can judge down to this day the changes that have taken place. Today there are no less than 40 newspapers in circulation in Srinagar, besides the newspapers which come from outside. I think all educated persons know how many of them are imported every day, *e.g.* 'The Statesman', 'The Bombay Chronicle', 'The Tribune', 'The Hindustan Times', 'The Civil & Military Gazette', etc., etc. Now I am addressing you as a juryman. Radios and newspapers exist and on top of all public meetings are held and the political education of the people goes on. We reach the next stage when the Dalal Committee made a report in 1931-32 and acknowledged the existence of the growth of political consciousness among the people. I am only concerned with the political consciousness in the State. They took notice of the political consciousness that had come about by 1931. From that moment down to this day we have had world shaking events, particularly the last war during which the minds of men have been stirred and shaken to a political consciousness which has become almost uniformly universal. It is impossible

today to suggest that the people do not know their rights ; that they do not insist on them or that they do not realise how they can attain them. The growth of political consciousness in Kashmir from 1929 down to this day is marked by this pamphlet "New Kashmir." It is only against these facts and in their light, and against the background of the circumstances I have described that you will be able to judge the effect of the speeches.

I shall read some portions from "New Kashmir." On page seven it says : Progress is a relay race. It is no easy race." On page eight, para. 2 it says : "On the 18th and 19th of August 1943, the Working Committee of the National Conference met at its Headquarters at Mujahid Manzil, Srinagar, and for two full days deliberated on the issue of the Commission (meaning the Royal Commission appointed by His Highness to suggest the next instalment of Constitutional Reforms). There were naturally very strong misgivings about the work it intended to do, or could do, in view of the nature of its personnel. On the other hand, the statement issued by His Highness the Maharaja Bahadur at the time of the Cripps' proposals had favourably impressed our minds. In this among other things, His Highness had declared that "in any case it is the duty of

the Princes to show themselves patriots and that they desire that their countrymen should feel themselves the equals of nationals anywhere in the world," and had ended up with the stirring words : "Freedom must be our watchword—freedom from crippling restrictions and strangling control, freedom from the subordination of India's interests to the interest of other parts of the Commonwealth." This Commission as you know was appointed by a Royal Command to go into the demands of the people and to suggest certain constitutional changes. It is with reference to that Commission that this is written here. Could any political consciousness beat the degree of consciousness which these words signify ? I ask you if the sovereign himself is saying these words and they are broadcast to the people here and they are conscious of these words, does it lie in the mouth of any one to call these people ignorant, undeveloped, etc. Can speeches made to them along these lines have a bad effect on the people ? If it is so, the effect will be the worst possible by this statement of His Highness. This is common property ; every boy knows it ; every child knows it. Can it then be suggested that the people of this State are not advanced enough to follow the political language of the accused ? It has been claimed by the authorities that it is one of the most advanced of States. I

have in my hands comments made by the Ex-Minister Mirza Afzal Beg in the Praja Sabha. Mr. Beg happens to be a detenu now. I am showing the history of the organisation to which the accused belongs. Speaking in the Assembly Mr. Beg said : " When we see that in spite of being able to put off any progress till some time in future His Highness has come forward and conferred reforms on the people of this country, we feel sure of the intention which underlies the Command, and of the un-erring instinct for Constitutional Government that His Highness the Maharaja Bahadur possesses. I, therefore, do not read the Command in terms of the Command itself, but I judge the Command by the spirit that underlies it and I do beg to express my congratulations to our Ruler on that instinct and that sentiment which has prompted His Highness to issue this Royal Command at this juncture. I feel that the present one is a real concrete step forward to the people of this country who can now associate themselves with the administration of the country. Opinion may differ as to how far we can influence the policy of the Government now through these reforms. Opinions may differ as to how far forward this Command can take the country, but opinions must be and surely are unanimous that this is really a step forward and judging from the spirit

underlying this step *we do hope that this will be only a first step in the progressive career of the country led by His Highness the Maharaja Bahadur.* I shall be failing in my duty if I do not say a word about what we should really have wished under the benign rule of His Highness the Maharaja Bahadur. *We should have wished, Sir, that reforms and reforms of the nature that have come, should have been well and properly based and started on a sure foundation giving us definite hope of the ultimate goal, namely, the "achievement of full responsible Govt."* If that is not coming forth in the strict terms of the Royal Command just now, we are nevertheless sure that there is no reason for despondency because of that very generous sentiment and spirit that underlies the Command to which I have just referred. When we read His Highness' statement issued on March 23, 1942, just before His Majesty's Government's proposals about the Indian Reforms were yet a sealed book and Sir Stafford Cripps had not made known to the world at large what he had brought to British India from His Majesty's Government ; when everything of that sort was not known to the world, it was only our Ruler who came forward with a bold statement regarding which, I can say without any fear of contradiction, that 563 Princes of India can be proud of. The words of that momentous statement will go down

in the history of this State, "that freedom should be our watchword, freedom from crippling restrictions and freedom from strangling control." This is the theme that I have been harping on the whole time. That is the theme of 'New Kashmir' which emerges from the speeches which are the subject matter of the charge today. Since 1929 down to this date, Kashmir has gone far ahead in political consciousness, and, therefore, it is not proper to say that speeches of the character which were made by the accused could not possibly be appreciated in their proper context and would tend to have a bad effect on the ignorant. In these days of 1946 people living in Srinagar are not ignorant of political rights. I have gone about and seen the people and found them well able to understand political language and it is a mistake on the part of the administration to treat them like ignorant people. So long as that tendency lasts it will be very difficult for the administration to be responsive to the people and to be consistent with the demands of its duty.

"One word more and I go straight to the speeches themselves. Before I leave 'New Kashmir' I want to remove the lurking doubt in your mind whether 'New Kashmir' contemplates a constitutional head of the

State or not and whether that constitutional head is to be the Maharaja Bahadur or not. If you refer to page 24, para. 23, you will find these words "Subject to the general control of H. H. the Maharaja Bahadur the jurisdiction of the National Assembly shall include, etc." It is a very important paragraph and you will notice, as I read the speeches of the accused, that in his last speech as well as in other speeches too he has said that the future system of Government which they demand shall be the system of Government as laid down in "New Kashmir." I am saying this to save the administration from a pitfall. Before I leave this subject I must show you the necessity of issuing the other pamphlet called 'Quit Kashmir.' As has been explained by the accused himself in his statement, events were developing at a tremendous speed not only in the world but also in India which once upon a time was considered a backwater. Britain had thrown out of office Mr. Churchill the great leader of the war. He had been actually put in the quiet shade by the electorate and was succeeded by the Labour Government with an overwhelming majority. This Labour Government faced the question of India and India meant British India and the Indian States. After due consideration the British Government issued the statement to which reference has been made by the

accused in his statement here and in his speeches. They sent out a delegation of three Cabinet Ministers, including the Secretary of State for India to settle the question of India's freedom. Can it ever be said that this was a time when anybody who had any political consciousness could sit still, particularly when the British policy was made plain to everyone as a policy of quitting India? Nobody could remain silent. The States peoples' Conference met and considered the situation and Sheikh Abdullah who is President of the All-Jammu & Kashmir National Conference and Vice-President of All-India States Peoples' Conference, which deals with 93 million people, not the 4 million people of Kashmir only, went to Delhi, consulted the States Peoples' Conference leaders and as a result of the drift of the political situation all over India it was decided that the people of the States must place their case before the Delegation. Naturally Sheikh Abdullah took steps to place the case of the people of Jammu & Kashmir before the Delegation. "Quit Kashmir" was the memorandum he submitted to them. "Quit Kashmir" is a catching phrase. Ever since Mahatma Gandhi announced "Quit India," it has become common property.

The Sessions Judge pointed out that

Mahatma Gandhi by "Quit India" meant that the British should quit India bag and baggage.

Mr. Asaf Ali: Every time the accused said "Quit Kashmir," he meant that the Dogra Army should go which again meant that it should be nationalised and thrown open to every Kashmiri. When Mahatma Gandhi said "Quit India" he meant that the alien rule of the British should go. He did not mean that every individual Britisher should leave India. No Britisher should live here who does not submit to the rule of Free India. If the interim government is formed the Commander-in-Chief and the trained officers employed by the Indian Government will have to submit to the orders of the Defence Minister. The army will be a completely Indian army while its conduct as far as the technical and operative side is concerned will rest with the Commander-in-Chief and the trained officers employed by the Indian Government. Whoever is there must be the servant of India because he is paid by India. Further referring to the Jammu & Kashmir army Mr. Asaf Ali added: "Every bullet that went into the heart of a Kashmiri at Khanqai Mualla was paid for by Kashmiris and that ought to be realised by everybody and therefore every Kashmiri has a right to have a voice in the organisation and control of his country's

Defence Force. Sheikh Abdullah regards himself as an insignificant individual but he represents the voice of the people, and ventilates their grievances, and demands that the army of the State should be nationalised and not be confined to a section of Dogras and he says 'make it a national organisation for which every Kashmiri national should be eligible and have the right and pride of participation in the defence of his State and country.' As soon as you do that it will not remain a Dogra dominated army and Government but it will be a Kashmiri army and Government. This is all that has been urged by the speaker. Now, Sir, I think I have reached a point when I can no longer postpone the reading of the speeches of the accused. I have however one more word to say. Reference has been made by the prosecution during the course of evidence led by them that objectionable slogans were raised. This is an unfounded allegation. Objectionable slogans were never shouted either during the course of the speeches or at their end. If you refer to the newspaper reports on the subject you will find my contention proved. The accused has not uttered one abusive word or epithet against anybody. He certainly authorised certain slogans by which he stands. The slogans which are regarded objectionable emerged as the result of public indignation after the

20th. I am not responsible for what you make people shout after arresting me. These slogans do not appear in the newspapers. They do not appear in the short-hand reports of the C. I. D. I cannot be held responsible for their addition in the long-hand version, which cannot be said to be the original report. And again where is the proof that they were not uttered by *agents provocateurs* or the agents of the C. I. D. who are all powerful and omnipotent here. Now I come to the speeches. The complaint I am afraid goes beyond the sanction. It includes extracts from speeches not mentioned in the sanction. We are concerned only with the charge. As it would appear from the charge framed by you, you have taken notice of certain parts of the speeches which are not particularly mentioned in the complaint.

But, Sir, as I stated right in the beginning this morning it was a series of speeches which began on the 6th of May and ended on the 16th and therefore, the best course we can adopt (and I would recommend it to you for judging the real meaning, intention, object and effect of these speeches) would be to read all the speeches as a whole. It will give you an insight into the speaker's mind. The reports supplied by the C. I. D. reporters are in places different from the press reports.

Certain words have been left out while certain other words have been added. The speech of the 6th has not been produced by the prosecution, but I would like to read a newspaper version of that speech." Here the prosecution objected and said that unless the newspaper formed part of the record, no reference could be made to it.

The Sessions Judge agreed with the prosecution.

Mr. Asaf Ali : I am shut out by the prosecution. Had I been allowed to read the speech of the 6th it would have done the prosecution some good. After all it is a printed speech in a duly registered and well-known newspaper of Kashmir.

Prosecution : I do not expect that at your hand.

Mr. Asaf Ali : Now I read the speech dated the 9th as a whole. I would request your honour to consider yourself as one of the audience and after hearing the speech to make up your mind about the effect it produces upon you. Begins reading the speech with a running commentary. During the commentary he says : " The accused has made a reference to certain statements by Mr. Fotedar regarding the Amritsar Treaty. It is obvious that a controversy in the newspapers was going on and Sheikh Sahib, quite

naturally had to answer it. With reference to the treacherous conduct of Maharaja Gulab Singh during the Sikh campaign against the British in 1845-6, and securing a reward for his treachery in the form of a sale by the East India Company of Kashmir for 75 lakhs of rupees, Mr. Asaf Ali mentioned that it was a historical fact recorded in many histories. But the latest verdict by an Indian of the position of Sardar K. M. Pannikar would be most appreciated for he was now the Prime Minister of Bikaner and was employed by this State when he wrote it in his book. He says : "Maharaja did not achieve his ends by methods which were always beyond criticism. He did not hesitate to resort to tricks and stratagems which would, in ordinary life, be considered dishonourable. He was trained in a hard school, where lying, intrigue and treachery were all considered part and parcel of politics." (See *Gulab Singh*, page 152). What Sheikh Abdullah said in his speech was a mere reproduction from history. Who can deny history ? In any case the reproduction of history has under no law been considered a crime or a seditious act. Everyone knows that some uncles of Queen Victoria were described during her reign as drunkards and lunatics. Nobody cared to take action against the historians who said that. If ever facts of history are repeated it is only to warn those who in their present

position exercise authority to dissociate themselves from what their ancestors had done. If His Highness really wishes to establish himself in the hearts of the people he should dissociate himself from the acts of his ancestors whose history is this. If you like I can quote from the *History of the Sikhs* by Cunningham. These are matters which do not come within the mischief of Section 124-A. I am carrying on a controversy with a gentleman who is misquoting the facts of history. Can it be sedition if I join issue with the controversialist? What the historians have said about Maharaja Gulab Singh is very unpleasant. I do not wish to go further into the details which are pretty disgraceful. The administration of Jammu & Kashmir should not shy at it. Section 124-A does not make even a malicious reference to the ancestors of a sovereign sedition. The actual words of the Section are "His Highness or the Government established by law in Jammu & Kashmir." How can you bring Maharaja Gulab Singh who is no longer the Ruler of Jammu and Kashmir within the meaning of these words of the section. While enumerating the principles of the law of sedition I quoted from the judgement of the Federal Court which said that the law of sedition was "not intended to minister to the wounded vanity of Government," and I add, "of the Rulers either." Then explaining

another expression in the speeches he said : " What is the context of " Parchoon Faroshi," which means retailing ? Why this should be considered a derogatory reference, I fail to see. You sell commodity whole-sale or by retail. The jagirdari system is but retailing land and today when U.P., Bihar, Madras and other Governments in India are abolishing the Zamindari system, if you go on parcelling out the rich land of Kashmir between a few favourites, naturally it is a measure of Government which can justly be criticised by any citizen and it is a legitimate criticism. If the Government grants lands to a few persons and creates a feudal class, naturally it is a measure of Government which can justly be criticised and it does not come within the mischief of Section 124-A. Is there any other grievance which is more legitimate than this ? If this is held to be a seditious utterance how is this just grievance to be ventilated ? Explaining " Dogra Shahi and Dogra Hakumat," Mr. Asaf Ali said that Dogra Shahi and Dogra Hakumat means a Government dominated by Dogras. There are words which have become the stock-in-trade of speakers everywhere. It is a well-known political phraseology ; for instance every time you say " Gora Shahi " or " Farangi Shahi " you mean a Government dominated by the British and every time you say

“ Naukar Shahi ” you mean a Government dominated by “ Bureaucracy.” If the Dogras dominate the government and the army, it is bound to be known and spoken of as “ *Dogra Shahi.*” *I am not suggesting for a single second that I have any grievances against the Dogra as a class ; for they too are citizens of the State of Jammu & Kashmir and are my compatriots. They are a very fine people and they are very patriotic. There is quite a large number of them living outside the State of Jammu & Kashmir.* The natural grievance of the majority of the people of the State is that the administration is dominated by a few Dogras, and I am perfectly certain you will not require me to produce evidence or read to you some authority where it is held that a legitimate grievance which must be remedied should not be considered innocuous. After all every State must be run by the representatives of the people who pay the taxes to maintain the administration. Even a pauper who buys a pice worth of salt or any taxed commodity, although he does not pay any income-tax, is paying his share of the tax which eventually accumulates in the State’s treasury and is meant to be expended on the well-being of the people. How can you make a distinction between one and another class of people ? How can you say that only the Dogras and not the Kashmiris should enter the State Army ?

Mr. Asaf Ali went on reading the speech, and after commenting on certain passages as mere rhetoric and declamation which were natural to speakers he paused to explain that part of the speech where it was said that the movement of 1931 had succeeded in terminating the essential part of the Treaty or the sale-deed of Amritsar. He said: "His Highness issued a proclamation in 1932 by which proprietary rights came to be exercised by Kashmiris in their own land, which were until then denied to them. That is the only meaning and purpose of this reference here." After reading a reference to Mirza Afzal Beg's resignation, in the speech Mr. Asaf Ali remarked that His Highness issued a proclamation on 2nd October, 1944 regarding associating two popular ministers with his administration; and he read out that part of the proclamation where the procedure for selecting ministers was laid down. "After the word of God" he said, "the Sovereign's proclamation is held inviolable." His Highness had laid down a certain procedure, but what happened after the first Minister had resigned? Another Minister was appointed overnight and the Assembly was given no chance of following the procedure by which it had been given the right to elect the next Minister. The Prime Minister with a species of ability, tact and political manoeuvring which uncharitable critics would call intrigue

managed to produce a gentleman who was appointed a minister overnight. The Assembly knew nothing about it. The Party from which the gentleman was to have been drawn knew nothing about it. This was considered a very serious breach in the constitutional frame work which had been built up by His Highness. This reference in the speech is to that fact. So far from being an offence it is a signal service to the constitution which was disregarded. The people wanted a proper constitutional relationship between the Ruler and the ruled ; they wanted to eliminate the middlemen who for their own purpose were playing with the lives and the destinies of the people. The people wanted stability which can only rest on the will of the people which can only be achieved by a responsible and representative system of Government. It is this cry from the heart and soul of the people which made Sheikh Sahib to produce this argument. Otherwise what is the Treaty? Where is it? After the statement of the British Cabinet Delegation it has ceased to exist. I have a shrewd and longrange suspicion that during the years to come, between now and the lapse of the treaties if they are acted upon they will be acted upon for certain purposes which will not be very agreeable to the States". Referring to the slogan "Long Live Revolution", Mr. Asaf Ali said that this slogan was first uttered by Bhagat

Singh in the Court when he was defending him and Mr. B. K. Datt. This was in 1929. This shouting of "Long Live Revolution" immediately earned Bhagat Singh handcuffs. Mr. Asaf Ali addressing the prosecution asked. "Is there a child in your home who does not shout. "Inqilab Zindabad" today? Addressing the Court Mr. Asaf Ali said: "I appeal to you both as a judge and as a jury, now that you have heard the whole speech, to judge whether it can ever be called a seditious speech. "Quit India" has become the staple food of every child in India. Something has happened in respect of "Quit Kashmir" here, that is this trial and it is certain that this trial has perpetuated this slogan.

Today it has acquired a new importance, a new significance and a vital meaning. It has become the very basis of their life. This is how innocent words suddenly spring into importance by the short-sighted action of a certain type of authorities, whose actions are governed by ideas of false prestige.

"And now, Sir, it is striking five and I shall continue my argument tomorrow."

The Court rose for the day. Some of the lawyers and others who were in attendance

in the Court were heard telling Mr. Asaf Ali "Today you have advanced the cause of Kashmir by ten years."

16th August, 1946.

Yesterday when we had completed the day's work I had just finished reading the accused's speech of the 9th May, after I had commented on it. I tried to make it perfectly clear that in the text of that speech it is amply clear that a certain historical controversy had been started by Mr. Fotedar, and the extensive reference to the Treaty of Amritsar, its origin, and the consequences which flowed from it, were really nothing more than a mere reply to Mr. Fotedar's contention. An occasion had arisen for a speech like that because this controversy had been raised, otherwise I am perfectly certain that the historical details prior to the conclusion of the Treaty of Amritsar may not have been considered at such great length by the speaker. But you will find that in the other speeches this controversy continues, and continues exactly in the same spirit. It is nothing more than a review of certain circumstances which led to what is called the Treaty of Amritsar. The historical facts which have been repeated in these speeches are undeniable. I would like to hear anyone say that the facts which have been stated in the course of these speeches are in any res-

pect whatsoever different from those which have been recorded by well-known historians in books which are commonly accepted as standard books on history. For a reference, it is easy, Sir, to read any of the books which have been mentioned by the speaker himself.

When I come to the other speeches I shall be able to convince you that he was only stating facts as he found them in books on history. He did not invent any of these facts. It is a well-known and accepted fact that the Sikhs, who were for some time rulers of the Punjab and of a good part of this territory, and they were routed because, first their generals played traitors to the Sikh Durbar and later because Maharaja Gulab Singh one of the trusted Darbaris of the day—was sent for and manoeuvred the situation in such a way that the forces of the Lahore Durbar were completely routed and finished. Lord Ellenborough, the Viceroy of the day, and Cunningham who has written the History of the Sikhs have thrown a flood of light on the details of this intrigue. Other historians, like Reynold Taylor and William Edwards have also dwelt on this subject. Even Mr. K. M. Pannikar, one time employed by this State, and now Prime Minister of Bikaner State, has also endorsed the opinion of these writers and historians in his book

Gulab Singh. And the reason why these facts of history had to be reviewed was because Mr. Fotedar had started a controversy about it, and it is true that the validity of the Treaty of Amritsar was questioned by the National Conference leaders in their constitutional memorandum to the British Ministers Delegation. Surely that was a purely constitutional approach and a highly reasonable step at a time when the Ministers were considering ways and means of disburdening England of the colossal responsibility of governing this huge country. In this context, it was but natural that their attention should be drawn to certain constitutional weaknesses which had to be taken into consideration in regulating the relations between the future Government of India and the State and also between the Head of this State and its people. And it was in that context that these speeches came to be delivered. There was nothing more than this in them.

Before I take up the reading of the other speeches, I think, it is only reasonable and correct that I should point out that the reports of these speeches, submitted by the C.I.D. reporters, are not entirely accurate or verbatim. Besides, you will remember that except for one speech which was made in Urdu, all the others were made in Kashmiri, but these speeches were taken down in Urdu,

and not in Kashmiri. I have shown you already that even in the Urdu notes certain gaps had been left which they had to fill up later on from memory or consultation between themselves. These reporters are not sure of what they have written. They have rendered most of the long-hand notes in Urdu incomprehensible and disjointed. Some sentences do not seem to be consistent with others. There is internal evidence in the reports to that effect. They had not taken down even the translation of the Kashmiri speeches, as far as possible, verbatim. Moreover, Sir, let us not forget the fact that when we are translating from one language into another it is very difficult to reproduce the exact spirit of the original, for every language has its own structure, its own idioms, and its own fine shades of meaning and genius. It is more so when you are translating a speech when it is being delivered by a speaker. It is impossible to take down the correct shades of the speech, its words and sentences, accurately. Now, Sir, you have also to consider the education, and experience of these C.I.D. reporters. One is not even a graduate, though the other is. Both of them have stated that they never received any training in the art of translating the Kashmiri language into Urdu. Whatever may be their capacity for reporting, it is impossible for them to reproduce

the effect of the original. It is very doubtful whether the words and sentences reported by these reporters, which form the subject matter of the present charge are the words and sentences uttered by the speaker, which have not been mutilated and misquoted.

Sessions Judge: Did not the accused admit in his statement that the reports of the speeches were correct ?

Mr. Asaf Ali: You are right, Sir, to the extent that the accused, inspite of the fact that he had every right to deny the accuracy of the reports of the speeches if he wanted to, was fair enough, good enough and noble enough to say "the reports of my speeches, though neither verbatim nor strictly accurate, are fairly correct." You should not take advantage of that admission. Every word that appears in these long hand notes is neither verbatim nor strictly accurate. Besides, it is a conditional admission. When a pointed question was put to him and he was asked whether he could point to the words and sentences which were misquoted, he said that he could point out the mistakes if he was shown his original speeches in Kashmiri.

These short-hand notes were notes in Urdu and not in Kashmiri, and, therefore, you cannot say for a single second that the gentleman who spoke in Kashmiri should be able to point out in Urdu where the deviations from the original notes had taken place.

The prosecution interrupted to say that the accused had said something else. He did not mean originals in Kashmiri. Mr. Asaf Ali: Surely the Court has heard him and the Court has heard my explanation and the Court is competent enough to differentiate between the two.

Mr. Asaf Ali continuing the arguments said: With the exception of the speech of the 16th May, which was delivered in Urdu, all the other speeches were delivered in Kashmiri. These stenographers were taking down notes not in Kashmiri and afterwards translating them at liesure into Urdu but, they were really taking down notes in Urdu simultaneously with the delivery of the speech by the speaker. It is, impossible, I maintain, for any person, whatever may be his ability, to reproduce the full effect of the original speech in one language in another one immediately. I can understand a man sitting down and calmly and carefully translating the idioms and the niceties of one language into another. Therefore, my criticism is perfectly legitimate.

These reporters have admitted that their ability to take down notes differs from time to time. If they happen to be in practice they can perhaps take down 120 words per minute; if they are not in practice their speed falls to 40 or 50 words per minute. One

of the reporters was tested for his ability to take down notes three times. What a sorry figure he cut ! What an exhibition he made of himself ! Each time he was asked to take down a speech he handed to you in a huff a note saying that he could not manage it for the speech was fast ; or because he did not understand the idiom ; or that it was difficult to translate the speech. In spite of the serious defects I have pointed out and also the fact that the accused knew that he could say point blank that the reports of the speeches were incorrect, he admitted before you that the general structure of the reports was fairly correct. I have taken all this time just to invite your attention to this fact and I would request you to bear it in mind while you are considering the reports of these speeches. Please do not forget that they are not as exact as they should be, and the accused is entitled to the benefit of a doubtful phrase or word which may not fit into the context.

Speech dated 10th

Now we come to the next speech which is on record. This is how it runs. (Begins to read the speech) " These slogans appear in the speech dated the 10th May, 1946. "*Narai Takbeer Inqilab Zindabad Allaho-Akbar-Kashmir ko Chordo—Ahadnama Amritsar ko Tordo*" These are the four slogans,

which he authorised the people to raise from the first day onwards, whether it was in the beginning or at the end of the speech. These four were the only slogans which were raised and none else and he stands by them today.

Then he quoted "*Keh Taqriban 1300 sal ke bad Betulmuqaddas Angrezon ke hawale kiya jata hai.*" "This" he said "is the internal evidence of the fact that the reporter had not the ghost of an idea what the accused was saying. This is proof enough of the ability and intelligence of the reporter. It is obvious that the speaker could never have said it. Every one knows that Palestine was not being handed over to the English but to the Jews.

Then he quoted: "*Keh ab hamen wahshiyon ki tarah sar sar kar zindgi basar karni hai ya aisi-o-ishrat ki zindgi basar karni hai,*" Mr. Asaf Ali commenting on this said that there the reporter has used "Aisho-Ishrat" to mean "Aram." Obviously the reporter has misused the word. When I read over to you other speeches you will find the word "Aisho-Ishrat" misused over and over again, in reference to His Highness. He passed to comment on "*Keh Kashmir ke 30 lakh admi Dogaron ki ghulmlai men kistarah rahenge,*" and said "Yesterday when I read over the statement of His Highness there was a reference in it to the subjection of the

States to the Political Department of the Government of India which was tantamount to saying that the States were in a subordinate position vis-a-vis the Paramount Power. Further there was a reference to the *autonomy* of States. The accused pointed out the misery and poverty of the people more or less in the same manner and spirit as did His Highness in the above statement. And he was quite correct in saying that the people of the States were slaves of slaves. There is nothing wrong or seditious about it. His Highness in his statement has admitted this fact and I explained to you at some length the implications of his statement yesterday. Referring to the sentence "*40 lakh admi Dogra Raj ke tale musibat men pare huwe hain*," Mr. Asaf Ali explained that when the accused referred to Dogra Raj he did not for a single second mean His Highness who also happens to be related to a Dogra family. He is referring to the domination of Dogras in the State administration and the State army. He is not referring to the dominant element of Dogras as a whole." Then he explained the reference to the Treaty of Amritsar. Referring to the speaker's remarks about the Jagirdari system and the resultant grievances of the people, Mr. Asaf Ali explained why the system of Jagirdari should be completely abolished. He paused at: "*Lekin Kashmiriyon ko*

fauj men bharti nahin kiya jata halankeh Kashmir fauj ne duniya men nam hasil kiya aur unhonne bahadury ke jawahar dikhaye lekin kab jabke woh Bahar ki fauj men bharti the." Commenting on this Mr. Asaf Ali said : " When I pay for the maintenance of the State services and I am as good a patriot as anybody else, why should I not be given an opportunity to participate in the State services ? Why should I be ruled out and on what grounds ? The other day my learned friend on the opposite side pointed out that in British India too there were martial and non-martial races. I can tell him today that in India there is no distinction between martial and non-martial races today. If you study the figures of the personnel that was recruited for the last war, which reached practically the figure of 2 millions, you will be surprised that the so-called non-martial classes of the past seemed to have some how dominated the Indian army and the so-called martial classes went into the shade. Therefore, even that justification is gone. Again, why was the whole of India crying itself hoarse against this distinction ? Underlying that discrimination were the misgivings of the British Government about the loyalty of the so-called non-martial classes towards the British Government. They did not want that they should enter the Army of Occupation. There was a

time when Madrasis were considered a martial race, but after 1857, the Tilangas and Purbias were ruled out and classified as non-martial classes, although they were among the finest warriors of the day, only because they had taken a prominent part in the war of independence of 1857. Kashmiris are a people whose ancestors have done a good deal of fighting in the past. Sometimes they were overcome and sometimes they drove out the invaders. After all what did they do before the present Ruler's family came here a century ago? Did they not fight the invaders of their country and frequently enough save it from foreign aggressors? It is nothing but a travesty of fact to say that Kashmiris are not a martial race. They have distinguished themselves in the British Indian army in the last war. I believe now-a-days there are many demobilised Kashmiri troops back home in Poonch and there are many elsewhere. I believe the number is somewhere in the neighbourhood of a lakh. I believe most of them belong to the so-called non-martial race. The problem of these people remaining without an opportunity of absorption anywhere in the State services, is a very dangerous one. Commenting on the expression "*Kashmir men dogron ke fauj ek army of occupation hai*" Mr. Asaf Ali said that what with the Jagirdari system and the

domination of the Dogras in the State army, this feeling was quite natural. Then he quoted : “ *Keh ham is fauj men dakhil hon kiyonkeh unka kahna hai keh zar khareed qaum fauj men bharti nahin ki jati.*” And commenting on it he said : This is where the shoe pinches ; this is the true state of affairs and this is what hurts the feelings and wounds the susceptibilities of self-respecting Kashmiris. Commenting on “ *Kashmir sirf isliye hai keh wahan jagiren di jayen. Bare admiyon ko dawaten di jayen.*” Mr. Asaf Ali said that this was one of the ways of ironically presenting the case. Obviously the speaker meant that while the mass of the population was steeped in poverty and the administration was not doing all it could for the people. On the expression “ *Aur hamara haq hai keh Dogra Shahi Hakumat se azadi ka haq mangen* ” he said that this was a purely constitutional approach and is addressed to those who are in power and authority. It is the key to the demand of the people : for here the speaker says : “ It is our right to demand our freedom from the Dogra dominated Government. We have certain rights and they must be conceded.” The whole speech deals with the ineligibility of Kashmiris as far as the State army is concerned, and the parcelling out of Kashmir into jagirs. These two grievances have been ventilated here and the whole position is summed up in this phrase.

If this is sedition, I am perfectly sure everyone here in Kashmir will repeat this demand until it is conceded. It is well known theory of law, as you are well aware, Sir, that when a crime becomes so wide-spread that everyone is prepared to commit it, it ceases to be crime; because the inherent constitutional sanction rests with the people. What is the inherent constitutional sanction? Leslie Stephen has stated it in a very illuminating way. Dealing with the sovereign powers of the British Parliament he says that it can do just what it likes; only it cannot make a man a woman and a woman a man; but there are certain things which even the British Parliament cannot do—for instance it cannot make a law which goes against human nature. He illustrates it by saying that if the Parliament passed a law that all blue-eyed babies should be slaughtered, the whole body of people would disobey it and rise against the Parliament. This is what is meant by "inherent sanction" in constitutional law. If my rights are being usurped and I am treated as a slave or a serf, then the law which maintains such a position ceases to have any authority for me. With this principle in his mind the speaker referred to Mr. Bhulabhai's famous words which he uttered in the course of his argument in the I. N. A. trial and which were "*It is the right of a slave to revolt.*" The accused has adopted

the most constitutional method of voicing the people's grievances. Sheikh Abdullah is himself a well-to-do gentleman, but moved by the misery of Kashmiris he is voicing the grievances of the down-trodden who are living in primary and abject poverty. His Highness has made his intention quite clear in his statement of 1942, but the administration of the State is in the hands of certain persons who are thoroughly incompetent and who for their own ends are exposing their Sovereign to the severe criticism of the people. They have reduced the chief spokesman of people to say :

*“ Ham ah bhi karte hain to hojate hain badnam
“ Woh qatl bhi karte hain to charcha nahin
hota.”*

There was only one object of all these speeches, namely, the attainment of responsible and representative government so that the people's grievances about Jagirdari, discrimination in the State army, restrictions on the bearing of arms excepting a certain class, which spell general distrust of the people and other complaints could be removed.

The Court : What was the object of mentioning the details of the Treaty of Amritsar ?

Mr. Asaf Ali : “ The reproduction of the history of the Treaty of Amritsar as I have

explained before, was in answer to a controversy started by Mr. Fotedar. In so far as treaties etc. are concerned the Cabinet Delegation have already declared that these treaties are going the way of paramountcy, which is bound to terminate sooner than later." Mr. Asaf Ali then read on the rest of the speech but paused to comment on "*Keh jo Wazir-e-Azam yahan ka hai woh kaushish karta hai keh yehan Hindu Muslim fasad uthe Musلمانon ke darmyan fasad uthe Mukhtalifh tiriqon se yehan fasad uthe. Jab se woh yehan Wazir-e-Azam bankar aya hai jo koi kam usne kiya usne lakhon rupyon ka faida apne Rishtedaron ko pahunchaya hai.*" He said : "I have to say something about this point. This is what I have been maintaining from the very beginning. The Premier was accused of many charges by the public and instead of instituting a case of sedition, he should have instituted a case for libel against the accused and the others on the basis of these charges, but he calmly swallowed all this and brought His Highness to the forefront and withdrew himself into the cool shade. These charges were of a very serious nature and if proved untrue would secure the conviction of any one who uttered them. But the loyal Premier preferred to thrust his Sovereign to the front instead of bearing the brunt himself. Commenting on "*ek commission muqarar kiya jaye jo yeh dekhe*

keh usne ab tak kon si sazishen kin," Mr. Asaf Ali asked : " Is not this demand constitutional? What the accused has done is this. As a loyal subject of the State he, on behalf of the people, has asked His Highness to appoint a commission to enquire into the charges preferred against the Premier, by public opinion and if they are true the Premier has been guilty of very serious dereliction of duty. The accused had only voiced the people's opinion. There were only two ways open to the Premier in this matter. Firstly he could take legal action against the accused for libel so that the truth or otherwise of the alleged charges could be proved, secondly he could contradict these charges; but he did neither of these things. Reading out the speech further Mr. Asaf Ali came to the point where the speaker had said that if it was necessary the question of the Treaty of Amritsar should be referred to the United Nations Organisation and the Counsel said : " The accused has expressed his intention of placing the matter of the abrogation of the Treaty of Amritsar before the U.N.O. Whether it is practical or not, I ask you whether it implies a seditious intention? The accused has also spoken about Mian Ahmad Yar Khan. I leave that portion out because it is a question of an individual and has no importance to the case." Continuing Mr. Asaf Ali said that if you read the whole of this

speech as I have done, you will find nothing objectionable in it. It is a perfectly reasonable speech and only the grievances of the people have been voiced in it, with a view to securing their redressal. There may be declamatory words here and rhetoric there, but you cannot put 'an interpretation upon them which was never intended by a speaker. We have to judge the trend, the drift, the tone, the temper, the intention and the effect of the speech from the speech as a whole and not from a few extracts out of it, or from a few words which appear here and there and which torn out of their context may carry a different meaning.

Speech of 13th.—Now, Sir, I shall take up the speech of the 13th May, 1946 from which a few sentences and words have been torn and made the subject matter of the charge. Before I start reading the speech I must draw your attention to the ruling given by Mr. Justice Zafar Ali. It runs thus: "The word 'jung' in Urdu is often used metaphorically and means the same thing as the implication of the word war in such expressions as 'warring elements', 'warring opinions', and so on, and unless there is something expressly to the contrary in a speech the expression 'war against the Government' does not transgress the border line between exciting discontent and exciting dis-

affection". Counsel then began reading the speech, and when he came to "*Istarah bhi jo akhiri jung jo shayad shuru huwi hai ismen bhi ap khuda par bharosa karen kiyonki jo qaum khuda par bharosa karti hai*", he said that the word 'jung' was used here in the sense already mentioned. He said, "Now, Sir, if you refer to the above ruling by Mr. Justice Zafar Ali (1930 Lahore) regarding the word 'jung' it will be clear to you what the word signifies here. The word 'jung' like many other similar words has become the common clap trap of politicians. If any speaker uses the word 'jung' he does not mean to incite the audience to violence. The accused has used the word 'jung' in the opening part of his speech, but it is perfectly clear that he certainly does not mean an armed contest. He asks the audience to put their faith in God and to rest assured that 'right' cannot fail to succeed.

The Court asked Mr. Asaf Ali: "Do you mean to suggest that whosoever places trust in God does not believe in violence?" Mr. Asaf Ali: Far from it. Hitler died with God on his lips and others too who were engaged in the last devastating war never failed to invoke the name of God. But in so far as the accused is concerned he could not mean by the word 'jung' was when he said that all that the people had was God's help.

Proceeding further he commented on . "*keh Maharaja Gulab Singh ke warison ko is mulk par ab koi haq nahin hai.....Jis waqt angrez yehan se wapis jate hain us waqt ham is angrez se kahna chahte hain keh Maharaja Harisingh ko is mulk men raj karne ka koi haq nahin hai*". Mr. Asaf Ali said. "It is a historical fact, that no plebescite was ever taken when Kashmir was transferred to Maharaja Gulab Singh for a sum of money. In fact it is on record that the people of Kashmir registered their protest which is still to be found among Residency archives.

The Court asked the Defence to point out states or countries where plebescite was taken.

Prosecution: Probably in Bombay when it was given as a dowry by Spain ?

Mr. Asaf Ali: You need not mention Bombay which is an inseparable part of what is known as British India today. You know what is happening to other foreign possessions in India today. The French have already declared that their possession will have to join the Indian Union. All foreign possessions in India have to be handed over to the people. But here we are concerned with Kashmir and who can doubt that Kashmir naturally and in all conscience belongs to the people of Kashmir, whose right to govern themselves and to control their own destinies

is undeniable. When the accused said that Maharaja Hari Singh had no right to rule over Kashmir, he meant that he had no right without obtaining the support of the people who had sovereign rights. He did not mean for a single second that he wanted Maharaja Bahadur to quit personally. He voiced the feelings of the people against autocracy. Autocracy is out of date today and nobody has the right to rule autocratically. Commenting on "Dogra Shahi" he said that this had already been explained at great length.

Referring to the expression: "*ek thok farosh ne hamen kharida aur parchon faroshon men taqsem kardya*", Mr. Asaf Ali said: "The accused here refers at Maharaja Gulab Singh and the East India Company as wholesale dealers and to Jagirdars amongst whom Kashmir is being parcelled out as retailers. Commenting on "*keh hamari azadi dabane ke liye hakumat zabardast tashadud karegi. Yeh ap par hai keh is tashadud ka ap kya jawab dange. Jab tak ham ap men hain ham apki madad karenge. Jab ham ap se alag honge tab khuda hi apkha madadgar hoga*," Mr. Asaf Ali said that this refers to the preparations started by the Premier according to his own statement, a mention of which has been made in the accused's statement. The accused says that it is for the people to decide how they will react to the suppression and repres-

sion by the Government. So long as the leaders are out of prison they would guide them and afterwards they should rely on God for guidance. You will see, Sir, there is nothing seditious here. The prosecution have tried to make capital out of this sentence and it also forms the basis of the charge. It is quite obvious that the accused does not ask his audience to use violence. He simply warns them against the expected repression. Referring to: "*Ke hamen dogra shahi hakumat se azadi hasil karna hai khwah ismen apki jan daulat makan tabah hojaye,*" Mr. Asaf Ali said the accused wanted the domination of Dogras to go and also the abrogation of the Amritsar Treaty; after which he expected that the relationship that would spring up between the ruler and the people would be based on responsible and representative Government and on the free choice of the people. His reference to the sacrifices that may have to be borne by the people was obviously to the administration's effort at suppression. Then Mr. Asaf Ali paused at the following:—" *Is se zyada achha moqa aur koyi nahan hai. Auo is dogra shahi ko khatam karen. Apko kiya karna hai aur kistarah karna hai yeh maloom nahin hai lekan jo apne pahle kiyah hai woh karna hai apko dikhana hai keh Pandit Ram Chand Kak quising ko Ministry ki kursi par nahin bathaya ja sakta hai* " and commenting on it he said that

the accused meant that there could not be any better opportunity for winning responsible and representative Government. The British Cabinet Delegation was in the country, and they were considering the whole question of India's freedom in which the States were also included. The larger question of the fundamental rights of the State's people was under consideration in connection with the Constituent Assembly and, therefore, it was the best opportunity for them to secure their constitutional rights in the most constitutional way. Once the false and insecure basis of the Treaty of Amritsar was out of the way the sanction behind H. H. would be the will and good-will of the people. The expression "*Dogra shahi khatam karen*" means nothing more than the abolition of autocracy and the Dogra domination in the State's administration and service. The word 'Quislings' here refers to Mian Ahmad Yar Khan and the Premier. He wants the people to work for the attainment of representative and responsible government and also for the secure foundation of their fundamental rights so that people like Pt. Ram Kak could not over-ride their wishes.

Referring to : *Agar men bahar raha to yeh sawal dunia ke kone kone men peda karoonga aur unhen yeh kahoonga keh 1846 Kashmir ke bachhe burhe jawan aurten ek*

haqir raqam men beche gaye. Zamana tareekh ke kisi daur men kabhi mulk ko na becha gaya hai mera faraz hai keh ise dunya ke kone kone men pahunchaun men chahta hoon keh Major Atlee ko jo Angrezon ke hukmaran hain unse puchhon keh ap to jate hain lekin hamen ek asse insan ke pas jiske sath hamen koi rishta nahin hai taluq nahin hai aur jise Kashmir ke sath koyi hamdardi nahin hai jisne Kashmir ko abdi ghulami men mubtila kar rakha hai. Agar men andar raha to apka farz hai us awaz ko pahunchayen aur agar men bahar raha to mera farz hai ham har halat men yeh farz ada karenge". Mr. Asaf Ali said here reference has been made to the Treaty of Amritsar in consequence of which the people of Kashmir were looked upon as "bought slaves", once that theory of their subjection is exploded the natural relation of a constitutional head of the State and its people with undeniable rights of full citizenship would be established. He further refers to the autocratic system of government which has no sympathy with the people and their grievances. There is nothing seditious here. It is really a reference to the time of Maharaja Gulab Singh.

Court : But this seems to refer to the present Ruler. Defence : If that is your view, I shall show you that Sir Albion Banerji said the same thing in 1929 about the unsympathetic attitude of the Govern-

ment towards the people. He says as follows : " Jammu and Kashmir State is labouring under many disadvantages, with a large Mohammedan population absolutely illiterate labouring under poverty and very low economic conditions of living in the villages and practically governed like dumb, driven cattle. There is no touch between the Government and the people, no suitable opportunity for representing grievances and the administrative machinery itself requires overhauling from top to bottom to bring it up to the modern conditions of efficiency. It has at present little or no sympathy with the people's wants and grievances."

Coming to the speaker's reference to Mian Ahmad Yar, and the words "*use khatm kardo*," and "*uske sath wahi saluk karo jo Ghaddaronke sath hota hai etc*," Mr. Asaf Ali said that since this portion of the speech was not included in the charge, he would pass it by. But he was bound to explain that "*Khatam kar do*" meant no more than that Mian Ahmad Yar should be cut off from the National Conference and treated as an ostracised person. He may indulge in his traitorous activities in the Premier's house or even in the Palace, but he should have no support from anyone from the public. It would be ridiculous to suggest that this was a hint that the gentleman should be "*finished off*." Surely Sir, the Government have not permitt-

ed anyone here to keep a pistol for such an achievement (laughter). And everyone knows that he is fully alive and kicking and not a hair of his head has been touched by anyone.

Speech dated 14th. Mr. Asaf Ali read the following from the speech for comments :
“ Ajtak mukhtalif tariqon se meri awaz dabane ki kaushish ki lekin men ne har waqt kaushish ki keh meri qaum ke halat bahtar hau. Men ne yehan ki Maharaja Hari Singh se intihai aqidat se kaha keh agar ap sirf karoron rupya jo ap aishishrat men kharach karte hen agar ap is raqam se gharibon ki halat behtar banate to bahut behtar tha ” and said that in view of the circumstances explained regarding the taking down of notes of speeches delivered in Kashmiri it is very difficult for anybody to say exactly in what form the whole sentence appeared in the original speech. These sentences also form the basis of the charge, But assuming that it is partially correct, the main point about it is the criticism of the Civil List. Let us look at His Highness's Civil List in the official budget. Mr. Asaf Ali then referred to the State budget and the sum under the head *Civil List approximated to over 30 lakh rupees.* “ This,” he said, “ *is the visible amount and it is said that the invisible figure is of the order of sixty lakhs.* To ask for its reduction is not sedition. This demand for the reduction of the

Civil List may have been expressed in a declamatory and rhetorical way, but the essence of it is no more than a desire for a reduction of the Civil List. Your honour is aware that in all the States in India a demand is being made by the people for the reduction of the Civil Lists of the Rulers. Unless the Rulers maintain that the entire State is their private estate and not a State, and therefore, they are entitled to appropriate whatever revenue they like, these heavy appropriations have no justification. *It has been said over and over again on behalf of the Rulers of the Indian States that their rule is "personal" ; that it is "personal rule" and not the rule of constitutional monarches. I have myself heard it said by certain rulers that they would not like the status of the constitutional monarch of the U. K. who cannot exercise his prerogative except on the advice of his ministers. The days of Haroon Rashid, and Akbar and the days of the Rajas who used to exercise ruling powers personally are gone. They were believed to have maintained personal contact with their people. Today these rulers are completely isolated and have no personal contact whatsoever with their people while they want to retain the position of the personal rulers of old. What personal contact have they with their subjects living in virtually hermetically sealed palaces, completely segregated from the people, whose voice cannot reach them except through a few persons who live around them. The present case is*

proof enough of a deliberate attempt by a small coterie to keep the ruler in the dark about the sentiments and feelings of the people. If an enquiry had been instituted into the alleged excesses by the military in this case for instance, nine tenth of the bitterness of the people would have disappeared. They would have thought "Here is our Ruler who is not bound by false ideas of prestige and who is impartial. The moment such a complaint reaches him, he says I will have it. Let there be an independent enquiry." By such an act of far-seeing and sympathetic statesmanship, if advised by the Ministers, the wounded feelings of the people would have been greatly assuaged, and they would have felt happier.

Reverting to the criticism of the Civil List, he said "The people are wide-awake to the fact that whatever money is appropriated from the revenue is contributed by their labour. And they make comparisons with the salaries drawn by the Viceroy of India and the Governors of Provinces, which are several times bigger than the biggest State. When they find the Viceroy is allowed only twenty and a Governor no more than ten thousand rupees a month, they wonder why their own Rulers should appropriate colossal for their Civil List. Why, even the King of England who presides over a huge empire is

allowed a comparatively small Civil List and that too under the fire of criticism today. If, therefore, the accused has made a reference to His Highness's Civil List and has figuratively criticised it he should not be held to have committed an offence.

The language may be turbid, but the essence of it is no more.

Commenting on the Begar system mentioned in the speech Mr. Asaf Ali quoted a passage from the Church Mission Society's report and was reading from Dr. Neve's "Thirty Years in Kashmir" a graphic and harrowing account of the Gilgit Begar system as it obtained in the State once, and to which the accused had referred in his speech to show what sufferings the Kashmiris had undergone during the past, when at the instance of the prosecution the Court said "From which book are you reading this?"

Mr. Asaf Ali: From "Inside Kashmir," an instructive book which has been proscribed in this State. *But I am quoting a passage from a book which is not proscribed. This quotation is from Dr. Nieve's book contained in "Inside Kashmir."* And there are many more from *Drew and Knight* and others. *It is my right to draw upon any book which substantiates the truth of my speech, and I cannot be called upon to forego that right.*

Court : In any case, I would like you to avoid reading from a proscribed book. You may refer to the original authorities.

Mr. Asaf Ali : *I maintain that the Defence is entitled to use even a proscribed book* ; but if you prefer, the original author of these quotations here is Dr. Nieve, whose "Thirty Years in Kashmir," contains the quotation I am relying on. And, as a matter of fact I have ransacked the libraries of benighted Srinagar, and have failed to procure necessary books of reference, and that is why I have fallen back on a proscribed book.

After some further argument on this point, Counsel contended himself with giving in his own words a harrowing account of the Gilgit Begar System, and contended that it was an undeniable fact of history, and it came into the accused's speech only to expose the evils of autocratic rule, and the absolute necessity of a responsible system of Government. He urges that the domination of a certain small section of Dogras in the affairs of the State should yield place to the Government of people. There are large sections of even Dogras who are in the position of the depressed classes. I do not quite see why Maharaja Bahadur after a century of his family's connection with Kashmir should regard himself a Dogra ?

Prosecution : He does not call himself a

Dogra. Mr. Asaf Ali: Then what is wrong about demanding the elimination of Dogra domination? What is the prosecution's quarrel? Is it not obvious then that no reference to Dogra Government, can be interpreted as one to His Highness?

It is quite clear from "*Is Mulk ke Hukumat yehan ke logon ke hath men muntaquil honi chahiye*" that the accused was pleading all the time for responsible government.

Commenting on "*Apko Raj karne ka koyi haq nahin hai so sal ke maflook-ul-hali ke bad ham yeh kehte hain keh woh raj hamen kabhi nahin qabul kiya hai aur na hi karenge. Is haq ke liye hamen intihai qurbani deni hogi so sal ke bad ek sal bhi Dogra shahi ke Ghulam bankar nahin Rahenge*" Mr. Asaf Ali said here he points out that after a century of poverty, squalor, and misery the people have a right to insist that if responsible government is not conceded then it should be remembered that Keshmir was transferred by the Treaty of Amritsar (which, in effect, is a seal deed), without and against their people's consent.

But when he says "*Ham ne musammim irada kar liya hai keh Maharaja Harisingh se apna haq lenge*" he drives his point home. There cannot be two interpretations of it. He say that *they would approach Maharaja Bahadur and demand from him their right.*

This is the most important and decisive sentence of the speech. It unequivocally sets out the basic procedure the speaker had in view, which was none else but addressing a demand to His Highness that he should concede their right. This is my complete answer to the charge that the speaker intended to incite his hearers to public disorder and revolt. It is rebellion or violence to demand your right from the Ruler?

“*Yeh bhi mumkin hai keh Maharaja Harisingh ko rupye dene paren*” Mr. Asaf Ali said, refers to the question of taking the matter to U. N. O. if necessary, and if the U. N. O. decrees that His Highness should be paid back the original purchase money, they should be prepared to do so. Does it sound like preaching a violent revolution? Can there be a more constitutional approach?

Court: But what does he mean by saying “We shall pay H. H. this money?”

Mr. Asaf Ali: Whether it is a good argument or not and whether it is the correct legal position or not, the speaker imagines that if this case is taken to the U. N. O. His Highness may claim that Kashmir is his personal “Estate”—Court: *State* and not *Estate*.

Mr. Asaf Ali: In view of the monetary consideration it may be claimed *that Kashmir*

is a *personal estate*, and therefore, the speaker thinks that money may have to be repaid to redeem it.

Speech Dated 15th. Mr. Asaf Ali then proceeded to read out the speech of the 15th May in which there were declamatory sentences such as "The flood of revolution does not respect even great Emperors and carries them away" and "One moment of freedom is preferable to a thousand years of life" and he said that it is pure rhetoric brought into the speech to give it a literary touch, and to impress the audience.

Speech Dated 16th. He then began to read the speech dated the 16 May and paused where the accused had said that everybody would condemn the teacherous deal of Maharaja Gulab Singh, and said "I have already explained to you that it is history and it cannot be wiped out. By repeating this fact of history the accused has committed no offence which can attract the law of sedition.

The accused has further said that he would take it out of or be avenged for this treachery on the heirs of Maharaja Gulab Singh. By "heirs" he means Dogras and does not in any way refer to any single individual. "Heirs" here is used in the same sense as when we say "the heirs of Clive or

Warren Hastings" meaning the British bureaucrats, and not their lineal descendants.

In so far as the word "intiqam" is concerned the accused has clarified it later in his speech, where he has said he would raise the voice of protest against autocracy. The prosecution was at pains to put much store by the word "Intiqam" without looking at the sentence that followed. The very next sentence makes it crystal clear that all that was intended by "revenge" was a protest upto the U. N. O.

Against his reference to Allama Iqbal's prophecy where he says that "even the dead will tear off their shrouds and get out of their graves" and shout "Dogra Raj Murdabad" the first expression is an Urdu idiom by which Iqbal's Persian verse is translated. Who has ever known the dead coming out of their grave whether with or without shrouds? It simply means that the dead issue of Dogra domination will be resurrected one day.

But a little further on the accused has questioned the power of Mr. Kak to extinguish the voice of the people. He has kept H. H. out of the controversy and poured out vials of wrath on the head of Mr. Kak, the Premier. Addressing the Premier, again the accused says "What power have you to oppose the will of the people?" which is only an angry challenge.

In the chance remark the speaker repeats the late Mr. Bhulabhai's classical expression "To revolt is the right of a slave" which the late Mr. Bhulabhai immortalised in the course of his memorable argument in the I. N. A. trial. It is a self-evident truth and this right of a slave is beyond question. It is beyond my comprehension how the prosecution can find in it anything objectionable. But to warn his audience against being provoked he says that hirelings will try to provoke you, but you must be on your guard. This is just what happened. There is the incident of 17th May before you where Omkarnath and Brijinder Mohan with a few other young men deliberately went to beard the lion in his den and provoked a scuffle. The accused further says that their aim should be to obliterate very form of communal Raj, whether Muslim, Sikhs or Hindu, and establish only Hindustani Raj meaning a non-communal Government of India. What can be more harmless and more commendable than this? He did not want communalism. He wanted responsible government as defined in "New Kashmir" *i.e.*, a government in which H. H. would be constitutional head.

Proceedings of the 17th August 1945.—Mr. Asaf Ali was quoting from "Inside Kashmir", the previous day when the Court ruled that he might avoid it. Before Mr. Asaf

Ali started arguments, the Court asked him if he had brought the book ' Inside Kashmir '

Mr. Asaf Ali : You did not allow me to read out of the book, and, therefore, there was no occasion for me to bring it today. Even now I am perfectly willing to place that book in your hands, so that you may read it to appreciate where Kashmir stands today.

Court : I would like you to hand it over to me.

Mr. Asaf Ali : Every book of reference you want, will be placed in your hands. But if it is suggested that the defence can be called upon to surrender a document which they hold for defending the accused, then I am within my rights if I do not do so. I maintain that the defence cannot be called upon to surrender a document or a pamphlet or a book to which it might refer for the defence of the accused. But since you want it for reference I cannot refuse it to you. I cannot, however, help making an observation on the subject. Yesterday when I told you that I was reading the quotations from ' Inside Kashmir ' a stir was caused in the dove-cotes behind the prosecution. All of them put their heads together. That is the state of the mind of that part of the executive of the State which is concerned with the maintenance of law and order.

Continuing the defence arguments, Mr. Asaf Ali said "Yesterday I concluded the major part of my labour and I am earnestly hoping that I shall be able to conclude the rest before lunch today. I very much fear that even if I cast a cursory glance at the material I still have before me, it is possible that I may not be able to conclude the argument for a long time. However, I shall make an earnest effort. I was dealing with the last portion of the speech of the 16th yesterday. On certain portions of it, it seems. the Prosecution lay a great deal of stress in order to show that by introducing a certain name into his speech the accused was really attracting the attention of the audience towards the activities of that person. Before mentioning that name I invite your attention to the fact that either the prosecution feel that the people of the State are politically well advanced and are so well versed that even a stray reference to a name, which is not a very common name here, is fully understood by them and that they will not merely think of the person but will also think of the activities which were associated with his name act accordingly, or the prosecution hold as they have maintained all along that the people of the State, particularly the audience which were addressed by the speaker were ignorant and illiterate who knew nothing about politics, who could not weigh and who

were not in a position to appreciate the points of the speaker and were bound to be misguided by his speeches. Now by which of these two positions do the prosecution stand? They cannot eat their cake and have it too. They cannot say that the people were ignorant and at the same time say that the people were so well-informed that the mention of Bhagat Singh's name conveyed to them the history of his activities also and they took it as a signal for action. So far as Bhagat Singh is concerned he is a figure in the political history of India, and only those who are fully familiar with what Bhagat Singh represented, would be able to understand a reference to his name in a stray and purely rhetorical observation at the tail end of a long speech otherwise it means nothing else but a reference pure and simple to one Bhagat Singh's name. The way the name has been brought into the speech does not suggest for a single second that the speaker was drawing the attention of the audience to the activities of that person whatever they might have been. The speaker was referring to Bhagat Singh's patriotism for which his life was declared forfeited. It is perfectly clear, therefore, that by a reference to Bhagat Singh's name the attention of the audience was being drawn to his patriotic motive. Now, Sir, is patriotism a crime? Is it a crime to draw anyone's attention to the

noble sentiment of patriotism ? Even H. H. in his statement of 1942 to which I referred the other day, has called upon the Princes to play the part of patriots and the accused in appealing to the audience to be patriots has only followed H. H. and called upon the people to be patriotic. This is all that this reference means. There is nothing further in it. The support of the speech is to be gathered from the speech as a whole, and not from a stray sentence, or the bare recital of the name of a patriotic person.

Now, Sir, I have practically finished commenting on the speeches. There is only one sentence right at the end of the speech which still requires to be explained. It runs as follows: "*Aj jo log bhooke pyase rahte hain jinke bachhe do pese ki dawai par jan deten hain un ki khun ki kamai jo log kutton par ghoron par kharach karte hain woh zalim se bhi badtar hain unke phande se chhootna har ek admi ha farz hai*". Now the whole of this sentence runs in plurals. It is a general reference and no person is specified in it. It is a general statement and perhaps I am entitled to say that unless it can be shown that this reference was directly intended to apply to any particular person, it would be useless to say that it was really meant to A, B or C. I know it has been said that this reference was understood by certain Govern-

ment officials (nobody else has said anything about it ; no one from amongst the public) to mean to apply to H. H. It is only the officials who say so. May I know why is the accused going to be prosecuted for a misconception of the persons who entertain such an opinion of H. H.? Here the speaker is referring to a simple question whether it would be just if the hard earnings of the people were to be employed in buying horses, and dogs, and maintaining them for personal pleasure. It would be regarded a questionable extravagance, and naturally any human being would say so. Any human being would be prepared to say that such waste of money would be tantamount to tyranny over the people whose money is collected for public purposes and well-being. This reference has no connection whatsoever with H.H., and, therefore, anyone who maintains that it is so, is probably reflecting his own opinion. People do see hundreds of cars and horses going about. Are not horses maintained in the army? Since I have been here I have seen a number of officers riding on both banks of the river by way of personal exercise, both morning and evening. They are not doing this in connection with their military exercises: I see these officers every day galloping along on horses for all they are worth. That sort of criticism would certainly apply to these gentlemen. I have also

seen packs of dogs going about in Srinagar. These dogs are not dirty ; they are bathed and corified and taken out for exercise every day. The owners of the elite of the canine species come within the purview of this criticism and that is all. If my learned friend on the other side is inclined to reopen the subject I shall know how to reply to it.

Evidence.—I have now to invite your attention to the evidence that has been produced by the prosecution ; so far I was reading the speeches. A good deal of evidence has been produced by the prosecution ; in all 28 witnesses, out of which 5 are outsiders and the rest officials, and even these five poor non-officials do not quite fit in as their evidence does not go to prove that the accused had committed an act of sedition. In so far as the official reporters are concerned, how can anybody blame them ; they are the victims of the necessity of earning bread which makes them write whatever it is desired that they should.

Most of the evidence adduced here excepting the evidence of the two official reporters and the two non-official reporters, consists mostly of a subject, which relates to a chapter of events which began on the 21st of May, and, therefore, I would request you to bear in mind the fact that this chapter has nothing, whatsoever, to do with the speeches.

It is a new and wholly separate chapter, a chapter of events which relates to the happenings which followed certain outstanding events ushered in by the authorities. It was anticipated by the Government that after the arrest of the accused nothing else but an emotional upheaval would take place, and, therefore, great precautions were taken and preparations made. According to Government's own admission the disturbances followed the arrest of the accused and his colleagues. I have already referred to Press Note No. 81 dated 23rd June, where it is clearly stated that all the incidents that took place after the 21st *followed the arrest of Sh. Mohammad Abdulla and his colleagues*, and that by itself is proof enough of the true state of affairs.

Court :—That Press Note does not mean “as a consequence”.

Defence :—I entirely agree with you that the word “as a consequence” are not used. But the word “followed” naturally means no less. The arrest followed the objectionable speeches and the disturbances followed the arrest. I pointed it out the other day that the disturbances took place after the arrest of the accused and in consequence of what the Government did afterwards and in proof thereof I read to you the evidence of Allaudin, Rampel, and Darbari. I have

pointed out that particular sentences in which they have quite clearly stated that upto the 20th the atmosphere was calm. This goes to prove that the Government in their Press Note, which was issued after calm deliberations on the 23rd June, stated the bare truth. I shall read the Press Note again so that we may be quite clear about it. You will kindly refer to Press Note No. 81 which is Ex. DC/1 and in it after the first lines in the opening paragraph the particular portion, I am relying on, reads as follows :—" Sh. Mohammad Abdullah and several of his colleagues were arrested on the 20th May, 1946 following a series of speeches delivered by him and his followers, which the Government considered objectionable, and a number of his followers were rounded up soon after. (Mark the full stop here which closes one chapter of events, and then follows another (chapter). " This was followed by disturbances in the city and elsewhere in the valley." Now you will see that the very context of these sentences is beyond a shadow of doubt. It makes it perfectly clear that the series of speeches which were delivered by Sh. Abdullah and his colleagues were followed by the arrest of Sh. Abdullah, and the accused's arrest was followed by the disturbances. The Government did not suggest that these speeches were expected to lead to public disorder.

Some remarks fell from your lips the other day which led me to think that it is necessary for me to explain the difference between Public Disorder and Private Disorder. These two expressions are self-explanatory. Any isolated incident like that of the 17th May, which was a private scuffle could not possibly be described as public disorder. This is not the sense in which the Federal Court's judgment which I quoted the other day uses the expression Public Disorder.

In the course of your remarks you first referred to the incident of the 16th May which appears in the evidence of Mr. Rampal, Magistrate. Now let us see what he says about it. Mr. Rampal says that somebody asked him over the telephone to go to Partap Bhawan where Hindus were holding a meeting and then he goes to say what Mr. Muzaffar told him, which is all hearsay. Then he adds : *Keh Muzir ke pahunchne se zara pahle Hindu aur Musalmano ke darmyan tasadum ho chuka hai aur yeh bhi unhone kaha keh thore se lathi charge se hajum muntashir kiya gaya.*" This is all hearsay. Then Mr. Rampal says : *phir chand askhas Palladium Cinema ke pas aye aur nare lagane lage. Narahaye Sarkar Wala ke khilaf the aur Dogra Raj murdabad waghera the. Jab ham Police Force lekar gali ke sire par pahunche to woh hajum wapis hogaya.*" What is the import of it all ? Let me examine

it. Is it a public disorder as contemplated by the judgment of the Federal Court which I read out the other day? Obviously it cannot be called a public disorder. No arrests were made. I expected Mr. Rampal and Mr. Muzaffar to effect arrests. They did not. If these people were shouting objectionable slogans, which were so seditious that today the accused has been hauled in the dock because he is alleged not to have protested against them, I am asking the prosecution why were those people not arrested and legal action taken against them? From the 6th to the 20th not a single objectionable slogan was shouted which may be called objectionable. The evidence of only two non-official witnesses, namely, Brijendar Mohan and Omkarnath who have deposed that people shouted objectionable slogans is all we have. On these occasions ample police force used to be there. Anybody would expect the authorities to arrest the persons who shouted these slogans—at least one man ought to have been arrested and he ought to have been tried and convicted. But the very fact that not a single individual was arrested, not a single man was apprehended and not a single man tried for shouting these slogans is complete proof that the prosecution have resorted to this as an afterthought because they realised that the judgments of the Federal Court, the Patna High Court, the Bombay

High Court, and the judgment of your Board of Judicial Advisers would not allow them to bring even the most abusive language within the mischief of Section 124-A, and, therefore, they had to resort to the concoction of the story about these slogans to provide the requisite padding to a hollow case.

Mr. Asaf Ali challenged the prosecution to produce a single instance of arrest and trial of any individual who shouted objectionable slogans either on the 6th, 7th or on any other day upto the 20th May. He added that in that case it does not lie in the mouth of the prosecution to say today that these slogans were shouted by anyone. Merely to produce a few magistrates, about 10 police officials, and non-officials like that Zargar (goldsmith) Omkarnath and Brijender Mohan does no credit to the prosecution. Even Zargar does not say any thing about these slogans. So far as Omkarnath and Brijendar Mohan are concerned, these two gentlemen belong to a group which is patently and glaringly opposed to the National Conference and the accused. They with a band of young boys invaded Fateh Qadal and went into the den of National Conferencemen and provoked a scuffle. These are the gentlemen on whose evidence you are asked to convict the accused. Is there one among them who could be called impartial? On the contrary I have proved by

their own evidence and by my evidence which is still on record, that none of these slogans appear in the Press. My learned friend on the opposite side had drawn my attention to certain provisions of law and tried to explain to me that the newspapers could not reproduce these slogans. Obviously there is no dearth of loyal papers in Srinagar. As loyal newspapers they could draw the attention of the Government to these objectionable slogans and ask them to take some action. This would be the normal procedure of any loyal newspaper. But as they did not do it, the contention of my learned friend on the oppositeside that they were not published because they were objectionable falls to the ground. From the speeches which I read over to you it is clear that the accused had authorised some slogans and he stands by them. His authorised slogans were: *Ahadnama Amritsar tor do Kashmir chordo : Narai Takbir Allaho Akbar : Inqilab Zindabad*” I maintain that no other slogans were uttered during this period *i.e.* from 6th to 20th. I will grant the prosecution this much that these slogans began to be uttered when the executive took the plunge against the people ; and began to kill and maim them in a sacred shrine ; began to dishonour women ; began to break into their houses at night. These incidents incensed them and they became desperate. They began to shout any slogans which came into their

heads. In fact even outside Kashmir these happenings began to stink in everyone's nostrils. This is the disservice which the Executive of the State has done to H. H. the Maharaja Bahadur of Jammu and Kashmir, the greatest disservice which they could possibly do. They committed acts on account of which even the very loyal people were inflamed and made desperate. It is the gentlemen of the military and the police and of the executive who ought to be in the dock and not Sheikh Abdullah for all that. They should "Quit Kashmir", and, it is to these people that the slogan "Quit Kashmir" has been addressed.

Coming to the examination of the prosecution evidence Mr. Asaf Ali said that 28 witnesses had been produced by the prosecution out of whom the largest majority consisted of Government officials. "You are fully aware of the interests and the circumstances of these gentlemen" he said. "I would request you to discard all the evidence which may appear to you to be tainted by the natural fear of these men that if it was not given according to the expectation of the prosecution the witness would be damned.

P. W. 1 Wazir Sarupchand Supdt. of Police
—Let us now analyse the evidence of each witness. In so far as the complainant is concerned, he has said at least one thing

which must be noted in favour of the accused. You will find it towards the end of examination-in-chief. He says that after the 16th May the accused stopped making speeches. Let us take that to be the end of one chapter. In his cross examination the witness deposed “ *Jo taqirren 20 May se lekar 30 May tak Khanqah Maulla men hoti rahin usmen H. H. aur unki Government ke khilaf taqirren hoti thin aur nare bhi H. H. aur unki Government ke khilaf lagaye jate the.*” Some remarks had fallen from your lips yesterday which led me to think that your mind was rather exercised by the fact that if people go into the precincts of a shrine not for the purpose of worship, but for the purpose of holding meetings, the executive have no alternative but to turn them out by force. I would request you to bear the above statement of the witness in mind and I would also request you to direct your attention to the incident of the 21st May in Khanqah Mualla when the military resorted to shouting because the mob inside the shrine was shouting objectionable slogans. I would also request you to bear this in mind that after the incident of the 21st, inspite of the fact that the mob, according to the statement of the complainant shouted objectionable slogans, etc. in that very Khanqah for several days, the authorities did not interfere with them, and, therefore, no occasion arose for using

force or fire-arms. I ask them why did they do it on 21st? If they had not resorted to firing on the 21st no trouble would have started at all, but they did not think of it on the 21st before firing at the mob. The very first shot they fired in the Khanqah-i-Muallah by itself became the most provocative act. On the 21st people gathered inside the precincts of the shrine of Khanqah. When the magistrate and the military arrived there they found, according to their account, that the mob was raising objectionable slogans. Now what did the military do? Instead of waiting for the mob to come out they entered the shrine and finally fired on the men who had gathered there. Instead of invading the shrine and provoking the gathering, they should have waited outside the enclosure, drawn a cordon against each of the three entrances and waited until the men came out, and they could have arrested them. Just imagine, Sir, if a similar incident had taken place say within the precinct of the Shankaracharya's temple and the military had fired upon men collected there to establish the false prestige of the Government, a fire of indignation would have been lit which would have roared from one corner of Kashmir to the other. This is what has happened. Therefore, you cannot lay at my door the responsibility for these happenings. It was entirely the doing of the

executive and they must bear the responsibility for all that.

P. W. No. 2 Pt. Shambhunath C.I.D. Reporter.
In so far as this witness is concerned he is utterly inefficient to take down a speech, which fact was clearly and glaringly demonstrated in this Court and it requires no further comment from me.

In so far as his extraneous evidence is concerned, namely, the narration of the purport of the speeches he had taken down, I have demonstrated that all these officials were apt to give the purport in their own biased way, according to the suggestions made by the prosecution. When I asked Allauddin from where he got the sentences which he had repeated in his examination-in-chief, he took a long time fumbling with his diary. I read over to him that portion of his examination-in-chief where he had deposed that the accused asked his audience to act in the same manner as they did in 1931 and asked him to show it in his diary, but the witness failed to do so. It clearly shows how biased, how poisoned their minds were against the accused. This is the kind of evidence they have deposed to on oath.

Prosecution : It is a mere presumption. The witness was able to show the sentence you referred to in his diary.

Defence : I am presuming nothing. If

you like I shall prove to you that until you pointed out a sentence in his diary, the witness was saying that he was unable to find anything to that effect. Even the sentence pointed out by you bore no resemblance to the sentence I had asked the witness to show in his diary.

P. W. No. 3 Mr. Rampal, Magistrate first class. Most of what Mr. Rampal says is *hearsay*, as I have already explained before. The witness deposed in his examination-in-chief that the accused had said "*jung ka bugle bajaya huwa hai*," while in the C. I. D. diary it is "*jung ka bugle baja nahin hai*." Now Sir, look at this gentleman's marvellous memory and impartiality and remember, Sir, that he was giving testimony on oath. I beg you to consider these sentences and see whether they bear any resemblance to truth. Are these witnesses capable of accuracy ?

Court : The witness was probably referring to "Delhi ke Marching order."

Defence : That has nothing to do with this sentence. Obviously the witness has invented this sentence. Can you on the testimony of such a witness convict the accused.

I am only showing a few samples, from which it is quite clear that these witnesses came here to give evidence with a biased and poisoned mind to help the prosecution to

secure the conviction of the accused. Their evidence is not worth the paper on which it is recorded.

P. W. No. 4 Allauddin C. I. D. Reporter.— I have already commented on him. He is of the same type as witness No. 2 and determined to say what would please the prosecution. But sometime he came out with the truth, but then suddenly endeavoured to go back on it because he realised what he had said or was made to realise by a stray hint by the prosecution, near whose table the P. Ws. used to take up their stand for a cue. In this examination-in-chief he first deposed that the accused said that Maharaja ka sayasi Iqtidar kam karna hai, but immediately he amended it and said “khatm karna hai.”

Prosecution : It is ‘khatm karna hai’ in the long hand diary. Defence : In so far as the long hand diary is concerned, as already explained it has not much value. In his examination-in-chief first of all he came out with the truth, but corrected himself when he got a little hint from somewhere. There is no doubt of it. Regarding the objectionable slogans the witness first told the truth when he repeated the authorised slogans but he was suddenly awakened first by his own bias against the accused and also by a little prompting by the Prosecution and

added the objectionable slogans, in a clever way. As the authorised slogans were in Urdu, he added that the other slogans were raised in Kashmiri. I will grant it that the witness was a clever fellow in that sense. Of course the police know their job, only they do it rather shabbily.

The most important thing which he has said is "Us waqt fiza calm thi," that is after the accused had terminated the series of speeches, and I want to take the fullest advantage of it. Now, Sir, this is a gentleman who attended almost all the meetings and was going about a lot, and he is by no means a favourable witness, and, therefore, anything he deposes in my favour should be relied upon. He says that the atmosphere was perfectly calm, when the speeches came to an end. There are other prosecution witness also who have stated the same thing.

P. W. No. 5 Pt. Nandlal Mattoo Magistrate.—He is about the most innocent gentleman I ever came across in my life. He seemed to be saintly man who ought to preside over the Shankaracharya Math. He is a very nice man. I think his evidence has a very great value because he was incapable of inventing anything as the others did, as he had no imagination.

He has deposed "20 May tak mere ilm men koi clash nahin huwa." He is a Magis-

trate, and a gentleman who has a sense of gentlemanliness. He has said this in my cross examination. He ought to be relied upon because being a Magistrate he would know everything that may happen anywhere. There is one more point in so far as this witness is concerned. He lives in Renawari, and to get to his office he has to cross more than half the city, and while going to and fro he would see what was happening in the city. Addressing the Court, Mr. Asaf Ali said "As Sessions Judge you have comprehensive knowledge of all that takes place both amongst the public and the officials, and I take it that you are aware as a jurymen of the fact that Mr. Mattoo lives in Renawari.

P. W. No. 6 Pt. Somnath President Municipal Committee.—He is a very polished, very nice and suave gentleman. He is also a very accommodating person who was prepared to take photographs of absolutely trivial places for he thought that they might be required somewhere ; and look at the coincidence that they were required to be produced in this Court by the prosecution. He never saw anything with his own eyes. The only thing he has done with a grave demeanour is to produce a long list of the damage done by 'rioters' to municipal property. When this witness gave his evidence, Pt. Jawaharlal Nehru happened to be here. I looked at the

list and laughed and showed it to Pt. Nehru who remarked that it was not more than a flea-bite. According to Pt. Somnath 52 acts of sabotage were committed by the people of Srinagar. But what is the estimate of the total cost of the damage to public property ? Rupees Seven thousand and sixty-nine ! Good God ! When this was the only damage the people of Kashmir had done to public property here, why was such a hue and cry raised all over India by Press Notes and communiques ? Do you call it a public disorder which justified *the killing* of eight persons, according to your own statement, and eleven according to me. How can you justify the murder of these persons for the loss of Rs. 7069 ? I want the gentlemen responsible for this wantonness about human life to come in this court and try to defend themselves. If a man kills somebody only because the other man had damaged his property worth Rs. 10000 and if that man is produced in your Court and puts forward this defence, would you acquit him ?

Now what I am saying is this. It is ridiculous to talk of this damage and bring all this material on record, and waste public time and money, only to prove that this was the result of the accused's speech. If the accused had preached violence, you cannot imagine the damage which would have

resulted. Perhaps half of Srinagar would have gone in smoke. Not a single Govt. building would have been left intact and the whole of Kashmir would have known the effects of roaring violence. The accused has still influence in Kashmir. He is the most popular leader here. The accused is the one man who has saved the State from the devastating effects of communalism. You ought to be grateful to him. He is the one man who has rendered invaluable service to the State and its people no less than to the Ruler, otherwise your life would have been miserable. And you put him in the dock for certain resentful acts of the mob whom you had infuriated and made desperate by shooting down men, dishonouring women, and humiliating men and women.

P. W. No 7 Mr. Banasidas, Municipal Engineer. I am not going to deal with his evidence. He is only an engineer and he has done what he was asked to do. He was only threatened by a batch of men and not beaten by them which goes to show that the people were not violently inclined. Had they been so inclined they would have beaten everybody connected with the administration after the ghastly acts the military had committed in the Khanqah and elsewhere.

P. W. No. 8 pt. Shambunath Telephone Inspector. He has said only one thing worth

commenting upon, and that is about disconnecting private telephones by the Government which goes to show that the Government was ready for all eventualities. The witness has also deposed that telephone wires were cut by the rioters. According to the witness this happened sometime at about 11 a. m. In the meantime the firing at Khanqah had taken place. That incident had infuriated the people and provoked by the cutting off of private connections, they may have damaged telephone wires. One point of importance—all this damage to telephone wires occurred in the Maharajganj area only. In disconnecting private telephones the executive here tried to copy the example of the Bombay Government who in 1942 before the arrest of the members of the Congress Working Committee had disconnected private telephones, but they overlooked the fact that what happened in Bombay afterwards might be copied by the people here. Why these methods of infuriating the people? Why not adopt methods which may bring the people nearer to you and bring you nearer their hearts, so that you may rule over their hearts and not over their dead or dying bodies.

P. W. No. 9 Dr. Hafizullah Medical Officer Civil Hospital. He has only produced a list of injuries. During the course of cross

examination he admitted that he also had an occasion to examine some members of the public. He has given the number of persons so examined. He has also stated in his cross-examination that he was called in by the police to attend to a dying man, who made a dying declaration in his presence. The individual who died in hospital was going from his house to the factory for work, when he was shot. I shall have to say something about these shootings a little later. This is a serious matter which you must take notice of. He was not found cutting any communications. He was not found killing or stoning anyone. I wonder what is happening to his survivors. I asked every single person who came into the witness box regarding the measures taken by the executive to provide relief to the survivors of dead persons or for the injured. Everybody stated that so far as he knew nothing was done. The individual who died in the hospital may have been the only bread winner! So many innocent persons were killed and the executive was so unsympathetic that they did not take any steps to provide relief. If Sir Albion said that the Government of Kashmir was very unsympathetic, he was right. It is right upto this day.

P. W. No. 10 Lt. Labhsingh 4 Kashmir Infantry. He is an important witness in

more senses than one. He is a gallant officer who returned from the Burma front about 6 months ago, and his unit was detailed on this occasion to go and assist the Maharajganj Police in maintaining law and order in the city.

To begin with you must allow me, Sir, to make a brief comment on the steps that were taken by the executive to let loose the military on the people. I do not know how they could do it, because under Section 126 to 129 Cr. P. C. provisions are laid down that only under certain circumstances is the military to be called to aid the civil authorities. The military cannot be let loose on unoffending citizens before the prescribed contingency has arisen. It is only after some trouble has arisen and when the police is unable to deal with that trouble and only after great deliberation and careful thought are the Civil authorities allowed to call the military, and even the military has to act under the authority and orders of the civil authority. According to his own account Lt. Labhsingh was receiving *Illtija* (entreaties) and not orders from the magistrate present on the spot. He became rather angry when it was suggested that he acted under the orders of the magistrate. This is the mentality of the gentleman who was acting in a place and under circumstances which required an experienced person who could coolly and

calmly deliberate and weigh the consequences before taking any hasty step. Besides, Lt. Labhsingh was not familiar with the language of the people. He did not know what they were shouting. Was it right for the authorities to act in that manner and send a party of soldiers who were ignorant of the language of the people? It will be said by my learned friend on the opposite side-I myself might give him a little tip-that Lt. Labhsingh was accompanied by Mr. Maqbool the magistrate on duty who knew the language of the people. Unfortunately for Lt. Labhsingh this gentleman acted as a messenger-boy between him and the mob. Mr. Maqbool went thrice to the mob and went right in among them and came out unseathed and did not sustain even a scratch or a bruise. This is ample proof that the mob was quite calm and was asking the military, who had entered the precincts of the shrine to clear out. What else do you think they were doing at the time? What would do you expect them to do?

• *Court*: There is no evidence to show that the mob was calm.

Defence: Certain facts are inferred from certain other facts. If you review the whole things as a jurymen it is quite clear that they could not do anything else to begin with. Besides, Mr. Maqbool's mixing with the mob and withdrawal without even a bruise

on his person is proof enough that they were calm. And even if we suppose that they were shouting slogans, what was the proper thing for the authorities to do under the circumstances? The only right thing which the authorities could do and should have done was to seal all the entrances with a cordon at each entrance, and to have told them "All right shout on, but as soon as you come out you will be arrested." But why shoot them down? It is obvious that the authorities were not there to maintain law and order; they were there to terrorise the men with the might of their weapons. Was it right? Why did they not leave them alone in the shrine as they did on the following days when unlawful assemblies were gathering in Khanqah and at Hazratbal and objectionable slogans were being shouted? But by then the authorities had realised the odiousness of their action on the 21st and its consequences. Why did they not do this the first day? If the three narrow entrances had been sealed and the military had taken up positions at the three entrances, everybody who was responsible for any illegal act would have been arrested without anybody lifting the little finger.

This is result of satisfying false prestige and vanity by the executive. Prestige is that which is upheld by the people, if it is not

so upheld its name is 'mud' Court: Don't you think the authorities were right in their action because it was public disorder ?

Defence: I would remind you once again that there is a difference between a 'disorder' and a 'public disorder'. The Fateh Qadal incident of 17th May was an isolated incident and it was also a private disorder on account of its origin etc. It did not affect the public at large. In so far as the incident of the 21st is concerned, the evidence of Lt. Labhsingh is very valuable. It was the very *first public disorder* provoked by the military and became the starting point and a storm signal of other incidents which took place in the city, the responsibility for which can never possibly and by no stretch of imagination be laid at the door of the accused.

P. W. No. 11 Capt Sunit Singh, Brigade major. I shall not comment on his statement. He is a formal witness.

P. W. No. 12 Maj. Sardul Singh military Hospital. The only matter which requires to be commented upon in his evidence is a reference to two cases of *serious* injuries. Please note the witness does not say *grievous* injuries. The witness has also deposed that these two persons would not be fit for the Army. Army is only for fit persons. Regulations are laid down that only individuals of a certain height, etc. will be eligible for

recruitment in the army. Every individual who joins the army should be fit according to regulations, but even a person who has sustained injuries would have to fight at the front for his life even if he loses one of his arms in a battle. However, even this unfortunate incident has no relevance whatsoever to the case before us.

P. W. No. 13 Lt.-Col. Narayansingh Commanding 4 Kashmir.—He is an exceedingly nice, and a very conscientious officers. I was rather impressed by his demeanour. Every time he answered a question he clicked his heels, and in fact I felt that I had better put him at his ease. He is unlike Lt. Labh-singh who had a certain pride of being a military man which could be called hauteur of demeanour. On more than one occasion, this witness says that he found a Shareef admi in the mob, and it appears that there were quite a number of shareef admis in the mob. He asked them to disperse. But he did not think that while his men were firing some of these shareef admis might also be killed. It has been suggested by Lt. Labh Singh and others that these people were throwing sticks—they call them *logs*—they were chips of wood by the fuller description elicited afterwards, which never hit anybody. In my examination of the witness about the dimensions of the building and the height

of its tower it is quite clear that it would be impossible to throw logs from the tower. In fact even these chips of wood if they were thrown, from the tower would fall on the mob and not on the military-the position was such. In any case the whole of his evidence relates to a chapter of events which falls outside the scope of this case.

P. W. No. 14 Brijender Mohan Member Hindu Student Federation.—He is partisan and zealous young man. He is inclined to depose against the National Conference people as he felt very angry with them. He felt that they were behaving in a very wrong manner, and, therefore, he managed to get together a band of young men and led them into Fatah Qadal. His purpose was to inspire confidence in the people who were frightened by the activities of the National Conference. This was a laudable purpose but it was obvious that if that were so they would not go into the lanes which happened to be breeding ground of these pests. They ought to have gone where the frightened and loyal people lived to encourage and hearten them. On the contrary, they actually went and provoked a quarrel in Fateh Qadal. You cannot call this quarrel a *public disorder*. It becomes a private quarrel which was deliberately provoked, and you cannot lay the responsibility for the scuffle that followed at the

door of the National Conference. These young men who deliberately and as a result of premeditation picked up this quarrel were responsible and were solely to blame for the result. In any case it was an isolated and private affair.

I will leave this witness to his lies. This is a gentleman whose evidence is not worth the paper on which it is written. He is an aggrieved party and wants to wreak his vengeance on the accused.

P. W. No. 15 Omkarnath Member Hindu Students Federation.—He is of the same category as P. W. 14, and I shall not bother about him except to point out that he walked five miles from his home to challenge the Fateh Qadal men.

P. Ws. No. 17 to 21.—I would not care to bother about Kasturilal, and from the next witness to the 21st all the policemen are formal witnesses who can be skipped.

P. W. No. 22 Khawaja Maqbool Magistrate.—He is an exceedingly interesting witness who has served the State for over 30 years and has almost grown grey in the Service of the State. While he was giving his evidence before the Court his demeanour was very amusing. He looked round all the time he was standing here in the witness box, sometimes looking towards the prosecution, some-

times towards the defence ; and sometimes he would scratch his chin before giving his answer. Every time his answer was of a slippery nature, and every statement favourable to the defence was promptly modified to worthlessness. Every glass of milk he offered was vitiated by a drop of poison. I asked him if Kashmiris were eligible for the army. The correct answer would have been a negative, but he maintained that at least Bombas and Khakkas were taken in the army. He himself recruited about 100 persons once, of whom about one third were these doubtful Kashmiris. Mr. Maqbool tried to evade questions, on all occasions except once when he was asked about the chiming of Gharyals and admitted that congregational prayers could not be said without Azan or the Arabic call to prayer 'although,' he added, "In Kashmir it is customary to ring the big bells to collect mosque-goers for prayers !" Unfortunately he has not left for me any loopholes of which I could take advantage. I would request you to bear these facts in mind and try to see whether he has differed from Lt. Labh Singh. Lt. Labhsingh refused to admit that he acted under Mr. Maqbool's orders. This gentleman's behaviour in the Khanqah proves that the civil authority is rotten to the core. Is Maqbool of the type who is to deal with a Muslim crowd in a sacred place

and who does not know what the feelings of the Muslmans would be if firing took place in the mosque ; what is one to expect of such an administration. Lt. Labhsingh was an ignorant person, but this gentleman was not. He knew the sentiments of the people. He knew how the Muslims would react. He ought to have ordered Lt. Labhsingh to clear out. In so far as he himself was concerned, he was quite safe with the mob, with whom he could have dealt by himself.

P. W. No. 23 Pt. Hiranand A. D. M.—He has deposed that “*Narahai Prime Minister ke khilaf the.*” This is about the utmost he said about the slogans he heard, and I am prepared to believe him. This I think, is nearer the truth than the other evidence that has been led by the prosecution. Questions were put to the witness about the posters. He was not aware of any posters or the subject matter of any posters even on the 21st. Nobody knows when they came out ? Nobody knows who is running the War Council ? The C. I. D. people take a very large hand in such activities when they want a case to mature. But there is no evidence that these posters made an appearance before the trouble of the 21st May.

P. W. No. 24 Ghulam Mohd. Zargar.—According to him the accused had only authorised the following slogans “*Ahadname*

Amritsar tordo : Kashmir chhordo : Kashmir Be Taj Badshah zindabad.” Is he not the same person who was summoned by the police some weeks after the speeches had come to an end and taken to the Secretariat where his statement was recorded and where he was made to sign it ? I tried my utmost to get that evidence, but the law stood in my way, otherwise we would have known what was his original statement. It is quite clear that this gentleman dare not go against the police or the Secretariat authority. His hands are tied down. He was made to sign this statement against the provisions of law. Even under Section 161 Cr. P. C. it is mandatory that no signatures should be taken by the police. On this subject there is a long judgment. Very strong strictures have been passed against this practice. His evidence wherever it goes against the accused should be discarded as tainted.

P. W. No. 25 Ghulam Mohd. Director visitors bureau.—According to this witness 6 dead bodies were buried under the Govt’s. arrangements and yet we were told that the dead bodies were handed over to the relatives. It is also deposed by him that in some cases relations accompanied the dead bodies. Can you imagine my relations not claiming the dead bodies and taking them to their homes ? This is a deliberate lie. Four

dead bodies which were buried under the supervision of another magistrate were not bathed, because, according to him the relatives said that they were shaheed and they ought not to be bathed.' What an explanation ! It is also deposed that these dead bodies at 2 a.m. when there could be no crowds to follow the Janazas and they could have been quietly taken to their homes. I am sure you will agree with me that the evidence on this point reveals a very scandalous state of affairs, and given the lie direct to the Govt's Press Notes. It has been maintained all the time by the prosecution that not more than 8 persons died, May I invite your attention to the Kashmir Govt's Press Note No. 54 Ex. D. V. You know according to the prosecution evidence before us 5 men were shot in Srinagar, 2 in Pampur and one in Anantnag, who was a woman. Out of the 5 from Srinagar 3 died in the firing in Khanqah and 2 were killed by the military elsewhere. Now, Sir, according to Press Note No. 54 four persons were killed for *damaging communications*. This Press Note is evidence in itself. You will remember that I had asked the Publicity Officer, if these Press Notes were issued with the approval of the Govt. and on the basis of information supplied by different departments of the Govt. In so far as the question of approval is concerned, it does not matter

whether the approval is general or specific ; it is undoubtedly a record of the Govt. The whole incident has been so graphically depicted that there can be doubt about it. If this Press Note is taken into consideration not less than 12 persons were killed. So you realise, Sir, the Govt. have tried to minimise their iniquities and to hide ugly facts in placing the evidence before you, and the public, and as no public inquiry has yet been held we do not know the full magnitude of the sufferings and sorrow of the people.

P. W. No. 26 Pt. Jialal Darbari A. S. P. C. I. D.—He regards himself as one of the main pillars of the edifice of the State. Whether he is so or not is another question. The way he tendered evidence before you gave me that impression. He belongs to a type that imagines that they make and unmake princes and prime ministers and without whom no State can exist. He is the gestapo chief here. History knows something about these heads of espionage. The Czar, Sultan Abdul Hamid, William Kaiser and others had very good systems of espionage, but unfortunately for them it was always their gestapo that worked their ruin. History knows it too well. Any State or Government which has to depend upon its C. I. D. for information against its subjects

may rest assured that their evil days are not very far, because these evils will be manufactured by their C. I. D. A State can only subsist by its human contact with the subjects through its organs, the nation-building departments, representative assemblies, and the fourth realm of the State, the press. These are the only appropriate and legitimate ways of obtaining useful information which is required by the State. As Legal Adviser of certain States it has been my misfortune to realise for myself what amount of mischief flows from their secret organisations.

Mr. Darbari is the prime mover and promoter of this case. It is on the basis of his confidential diaries that the authorities were induced or persuaded to take a step which has led to a very great deal of mischief. The very remedy which was sought for putting down what was believed to be a dangerous movement, has unfortunately not merely caused a great deal of disturbance, but has torn asunder the people from the Government. One does not know how far its repercussions will go even after this trial is over. Now, Sir, in so far as his evidence is concerned he has stated a few things which are of interest. You must have noticed his demeanour while he was giving his evidence before you. He was speaking with his tongue in his cheek.

Every time a question was put to him he smiled and answered first to the satisfaction of the defence and then immediately modified his answer by adding a sentence or two to give it a different turn, thus pulling the whole fact in the direction of the prosecution.

I put him a simple and straight forward question about the grand reception that was given to H. H. when he returned from the Middle East and which was organised by Sh. Abdullah and his colleagues. He took a minute or two to answer it. He was weighing in his mind where this question was going to lead. Afterwards he admitted that reception was organised, but he paid a very grudging tribute to the accused when he said that he also had a hand in it. Then I suddenly put him another question "Who happened to be the Prime Minister at that time?" Because it was not the present Prime Minister who had done anything regarding this reception and the witness knew it. He stood still for some moments. He looked towards the prosecution; he looked towards us. He kept mum for more than a minute. Then the answer was, to begin with, "Well, I do not remember whether it was Sir B. N. Rau, but Mr. Kak. . ." There I shut him up, and asked him not to prevaricate. This man with great knowledge of every thing that happens in the

State said that probably it was Sir B. N. Rau. You can imagine the amount of partiality with which his whole mind was saturated. I have exposed the character of the gentleman, the gentleman who had taken an oath to tell the truth. I will dismiss the rest of his evidence as tainted by partiality for he is anxious to secure the conviction of the accused. But before I finish with him I would invite your attention to one or two things. He says: "*Quit Kashmir*" meant *Maharaja Bahadur ke hukumat khatm ho jaye*" *Wafadar riyaya par kuchch asar nahin huwa*". It shows that the bulk of the population of the State was not affected by it. Even H. H. in his gracious statement to the Darbar which he summoned the other day admitted that as a result of certain happenings in Kashmir he had received a considerable number of messages by telegrams and otherwise, professing deep loyalty of the people to the throne. These two statements put together go to show that after all the kind of mischief which was expected and magnified by the executive was confined to a very limited circle if at all. I should like to know if it is so, why the military was stationed all over Srinagar and other parts of Kashmir if not to provoke the people? These two circumstances have got to be considered. Either the evidence is true that the bulk of the population was perfectly loyal and if it is also true that they

were in no way affected by these speeches, then why take these elaborate precautions and go and make people believe that something colossal is going to happen in the State? This is the internal evidence that proceeds from the evidence of most of the officials of the State. He says when referring to the Treaty of Amritsar *Chornama Mulzim kah raha tha*'''. This expression Chornama has never appeared anywhere, in any report of the accused's speeches. *This shows that Darbari is a liar of the very first water.* It was he who was carefully scanning all reports and his confidential diaries. Now we know whom to catch. This is the gentleman who comes to this court and dares on oath to invent a lie and put words into the accused's mouth. It is perfectly obvious that he was lying in this instance to the prejudice of the accused. Most probably he has been lying to his sovereign also. He must have been carrying tales to the Palace of a most hair-raising nature. This is a sample of it on oath. Anyway, let me examine the rest of his relevant evidence against the accused. A lot of hue and cry has been raised by the executive about the violent programme of the National Conference. But let us see what the Gestapo Chief Mr. Darbari has to say about the programme: *mulzim apni taqreer men kaha hamko chanda jama karna chahiye take 75 lakh rupya jama karke*

Maharaja Bahadur ko diya jaye keh woh Kashmir chhor de aur mazeed chanda isliye bhi jama karna chahiye keh Amritsar ke ahadname mansookh karaya jaye ya iske bare men case ight out kiya jaye halqa committee wale chanda jama karte the mere reportaron bhi yahi Information hai joki mene Bayan ke hai chanda 6 May se laker bad azan tak jama hota raha''. The main burden of this evidence is that the entire scope of the activities of the branches of the National Conference was the collection of funds for (1) international litigation or propaganda about the abrogation of the Treaty of Amritsar and even for the repayment of the purchase money, and (2) for the relief of those who may suffer from the repressive policy of the Government.

But his reference to posters issued by the underground workers called the War Council relates to the post 20th May chapter of events. Not a single poster appeared before the 20th, if any did I challenge the prosecution to produce it. They appeared after the 20th, after the iniquitous treatment of the people. There was no sign of any posters before. The witness goes on to say that these posters instructed to mob to damage bridges, etc. He is looking all the time for criminals. He cannot think another terms. In old times, Sir, Kings who enjoyed personal

rule also used to employ a secret service. These secret agents carried information of the miseries of the people; about the wretched, needy people, who were in need of relief. They were not like the present Secret Service men whose job is to make even a decent citizen appear like a criminal. His reference to the incidents of 1931 is pure hearsay because in his cross examination he admitted that he had no personal knowledge about 1931. He further says that the accused had started the movement of 1931. This evidence could never be read out to assessors or jury-men. It is obvious that it is hearsay, and totally inadmissible.

Every single person knows that Sheikh Abdullah was not the author of the movement. He was barely 24 or 25 years of age and fresh from College. Leaders of 1931 were others. Therefore, to try to bring him into this picture in this manner is nothing else but the work of a diseased and poisoned mind which is full of venom against the accused. Then he goes on to say many other things which it is not worth my while to read. One little sentence, however, deserves your attention. I asked him whether it was a fact or not that all meetings were stopped after the 16th. He did not admit even this fact which is admitted every-where and which is in the diaries also. You will appreciate how deeply

biased he was against the accused; and therefore no statement of his prejudicial to the accused should be believed. He has stated in his cross-examination that the news of the arrest of Sheikh Abdullah percolated to the people on the evening of the 20th and that upto 7 a. m. on the 21st there was no incident. Then he adds "Because the people were getting ready for the disturbances". Can a mind be more subtly poisonous than this?

The witness in his cross-examination has produced Ex. P. O/3, his confidential diary for the 4th May, 1946. It is totally irrelevant and inadmissible in evidence. It was put in by him at the end of his re-examination at the instance of the prosecution. Sir, that document has nothing whatsoever to do with this case, because that document related to a date which was at least two days prior to the 6th on which the first speech was made. And any case it is all HEARSAY, the truth of which cannot be tested by any means at our disposal. The document starts as follows: It has appeared on secret enquiries", which shows that the whole document is HEARSAY. The names of persons who made these enquiries of reports are not stated and therefore, we cannot test the truth or otherwise of this document, and in this document appears no clue to the persons who

could be examined here, nor is there any proof as to when it was actually written. There appears an endorsement by Mr. Niaz Ahmad, the Chief Secretary at the end of the document to the effect that it was handed over to Pt. Shamlal Jalali for production in Court. It is quite obvious that Mr. Darbari had no authority to produce this document in your Court; only Shamlal Jalali could have done it. And we were not allowed the chance of examining Mr. Jalali. This document runs :—

“ It has appeared on secret enquiries that Pt. Jawaharlal Nehru has advised the National Conference not to take any direct action at least so long as the result of the Simla Conference was not known but the general consensus of opinion of the National Conferences leaders is in favour of precipitating a traitor to the Kashmiris and having dealt a death blow to their cause which they could never forget and forgive. It is intended by them to take such steps as may force the Government not only to resort to a lathi charge but even to open fire resulting in the deaths of over a hundred persons at least. This is believed by them to afford them a chance to carry on propaganda against the Hon'ble Premier and the State as might necessitate the Government of India to intervene. In the event of a disturbance

taking place it is proposed by them not to issue their statements to the local press but depute special messengers to Lahore by cars so as to have their statements published in papers there by the following morning. Some of the leaders will manage to keep outside the State and even quietly slip out of the State to contact outside Indian leaders and carry on propaganda against the Government. Preparations are afoot to launch upon an agitation soon. The Mufassil organisations are also being prepared to simultaneously rise and act up to the programme to be supplied them. It is not unlikely that efforts would be made to cut off lines of communications, assault Government servants and try to set alight Government buildings. Strenuous efforts are in progress to find out the precise date when the agitation will be started and the form it would take, though utmost secrecy is being maintained by the National Conference it is in this respect.

About 3000 persons met at Seki Daffar on the evening of the 4th of May with Ghulam Mohy-ud-Din Kara in the Chair. Sola Galadar wished the irresponsible Government to be destroyed and their voice to reach the Palaces. Mohammad Abdullah a worker of the Halqa Committee remarked that the Government believed that by appointing a

traitor as Minister they shall be able to disrupt the National Conference which he said could not be. Mohammad Sultan Carpenter of Halqa Committee Nawab Bazar said that times had come when they had resolved to wage war to attain freedom and assured them that these oppressions would also get removed soon. He added that they had arrived at a stage when they would end the irresponsible Government. He further said that they wanted to assure full meals to all including peons and police constables and appealed to them to unite. He objected to His Highness' expending lakhs of rupees on polo ponies in Bombay and passing his time there and warned the people to beware of attempts being made to divide them. Mohyud-Din Kara referred to how an entire nation had been sold into the hands of the Dogra ruling family by the English for 70 lakhs of rupees who had thus been enslaved for over a hundred years. A section of people, he said, opposed their demand for freedom by giving simple people to believe that their religion was thus in danger and further remarked how they had created an awakening within a short time as had emboldened a leader of sweepers to tell the Prime Minister and the Health Officer that they should either grant them their demands or else vacate. He referred how Mr. Beg had resigned on finding that Ram Chandra Kak

was depriving them of what rights they had gained on account of sacrifice preferred by them. Hon'ble the Prime Minister was alleged to have been born while hatching conspiracies, to be living in conspiracies and to die while conspiring. Addressing the Pandit brothers, he told them that had Mr. Kak been a Muslim, he would have shown them what treatment he would have meted out to him. The Prime Minister, he said, was a sheer disgrace for them. The Prime Minister, he added had not benefitted the Pandits but had harmed and betrayed them during the bread and Durganag movements. Nothing it was averred by the speaker, had been done by Hon'ble Prime Minister for the betterment of Police men. He was also stated to have benefitted his two brothers unduly. Reference was also made to the deputation of the Publicity Officer to British India to arrange with the newspapers there not to give publicity to Kashmir affairs. Hamdard was stated to have been won over and censorship on it removed. He appealed to the Hindus, Sikhs and Muslim, in the name of starving people to arise and put this oppressive Government to end and spurn at Ram Chandra Kak. Under the responsible system of Government, he said, it was upto them to send Maulvi Yusuf Shah or Pt. Shiv Narayan Fotedar to the Constituent Assembly whom-so-ever they

liked. He assured the Pandits and the Muslim Conferences that he would be prepared to make necessary amendment in the "New Kashmir" wherein it was proved to be necessary. It was also announced that a meeting will be held on Monday at Pathar Masjid where Sheikh Mohammad Abdullah would also address them. Usual provocative slogans against the Hon'ble Prime Minister and the Hon'ble Public Works Minister were raised towards the close of the meeting when they were dispersing in different directions.

Secret information has been received that National Conference leaders are meeting on Sunday behind closed doors at the house of Bakshi Ghulam Mohammad to decide upon the course of action to be taken by them. Sheikh Mohammad Abdullah is said to be returning to Punjab shortly.

Shiv Narayan Fotedar is reported to be drifting towards the National Conference as a result of his exploitation by the National Conference leaders, Janki Nath Zutshi, Durga Pashad Dhar and Jialal Kilam who is manoeuvring all this from a distance. Jialal Kilam after playing his part in the city will leave Srinagar for Mufassils apparently on grounds of indifferent health.

The Principal Degree College is reported to have refused to accede to the demands

laid before him by the Hindu students who therefore intend going on strike from Monday as long as their demands are not acceded to.

Some of the leaders of the Shromani Khalsa Darbar are reported to be submitting petitions to Hon'ble Prime Minister and Hon'ble Home Minister urging them that the fines inflicted on Sikh students of Degree College were heavy as compared with the students responsible for creating the trouble, which was described to be an act of grave injustice.

Sh. Mohammad Abdullah and Ghulam Mohy-ud-Din Vakil visited Mr. H. N. Brailsford care of Reuters New Delhi, at the Savoy Hotel on the evening of 4th May.

At a meeting attended by 20 members of the Karan Singh Woollen Mills Labour Union held on 3rd May the labourers were urged to strengthen their organisation and and press for increase in their wages as it was not possible for them to make two ends meet.

About 10 Khaksars met on 3rd May at the Anjuman Khaksaran wherein it was resolved that the Khaksars be informed to offer Nimaz prayers on every Friday in a formal way.

A number of young men amongst the

Kashmiri Pandits are starting an association with the object of counteracting against the villifying propaganda carried on against the Government. They intend also starting a newspaper for this purpose.

Ch. Ghulam Abbas is stated in Muslim Conference Circles to be arriving by Monday latest, when the feasibility or otherwise of effecting a compromise with the National Conference will also be considered.

Submitted for favour of information.

(SD.) J. L. DARBARI.

Asstt. Superintendent of Police,
C. I. D. Srinagar.

Regarding that statement in the document that the National Conference leaders were in favour of precipitating the crisis, Mr. Asaf Ali commented that there again these gentlemen knew nothing about the National Conference leaders' activities ; they cannot prove their own statement. Referring to the accusation against the Prime Minister, Mr. Asaf Ali said : " This is a little bit of sauce. Naturally unless these statements contain some sauce and spices they would not attract the attention of the Prime Minister."

Commenting on " resulting in the deaths of over a hundred persons at least," Mr. Asaf Ali said : " Thank goodness we have been

spared 92 lives. The C. I. D. had prepared the ground for a 100 deaths."

Commenting on "might necessitate the Government of India to intervene," Mr. Asaf Ali said: "It appears to me that the gestapo is very well aware of the ways in which the intervention of the Government of India can be invited, and they thought that this was the best way of putting it out."

Please note that here the Prime Minister is the object of attention and the State comes in by the way. There is an expressive saying in English about "the tail wagging the dog" the State is the body while the Prime Minister is the tail, that wags it. The tail is more powerful than the entire body of the State—perhaps it needs to be docked to allow the body to exercise a little more freedom of movement.

Please note "agitation" and "cut off lines of communications." The report does not say that any decision had been taken but merely indulges in speculation that it might be so etc. In spite of the utmost secrecy maintained by the National Conference these secret agents profess to have got hold of everything.

The expression "wage war" and "irresponsible Government" are very mischievous ways of putting things. It is clear from this report that the National Conference wanted

to raise the salaries of peons and police constables. The only authorised slogans are mentioned in this document. These were the only slogans that were raised and none other. It is sheer nonsense to talk about other slogans. The Prime Minister and the Public Works Minister were the sole object of attack and for very good reasons—even the speaker referred to them as the Jaichand and Mir Jaafar of Kashmir, for their alleged betrayal of Kashmir. Only two other slogans were authorised by the National Conference as we know. Here is internal evidence that it was so.

Referring to “Sh. Mohd. Abdullah and ghulam Mohiud Din Vakil visiting Mr. H. N. Brailsford care of Reuters New Delhi,” Mr. Asaf Ali said “This shows that Sh. Abdullah was not in Srinagar on the 4th.”

Referring to “a number of young men amongst the Kashmiri Pandits—against the vilifying propaganda,” Mr. Asaf Ali said “Now we know from where Brijender Mohan and Omkarnath drew their inspiration, this is where the gestapo comes in. It was the gestapo which was inciting these young men.”

And now I may pass on to the next witness.

P. W. No 27 and 28 Dwarkanath and Ramchandrar Reporters Hamdard.—Referring

to the alleged original long-hand notes of the speeches, which were produced by these witnesses at the instance of the prosecution and which had not been summoned, Mr. Asaf Ali said: "Whatever may be the value of these documents to the prosecution, I am not prepared to accept them as the originals, which were destroyed according to the witnesses themselves. They are inadmissible because where is the guarantee that what the reporters produced at the instance of the prosecution at the time of their cross-examination—after 2 or 3 months, were preserved in the office? Why should they be preserved? There is no newspaper office that I know of where routine reports of speeches etc. are preserved, because they are not wanted. And, therefore, these documents are worthless. You will notice that the original notes from which these long hand notes were prepared have been destroyed. so there is no chance of our testing the truth of these reports. The reports could add words here and there and I am entitled to maintain that they did.

Summing up.—I have disposed of the evidence and the speeches. All that remains for me now is to sum it all up. In my prefatory remarks I explained the political and historical background; your duties which are of a composite nature that is you are enjoined to act as a judge and also as a jury. I

have read over to you the decisions of High Courts which are binding on you. Then I gave you certain important dates; and explained how the accused's arrest was illegal; how the "sanction" was invalid. I would request you to note that the sanction has not been proved according to the prescribed procedure. Nobody has appeared to prove that the sanction was duly granted. Then I explained how the "complaint" could not be taken cognizance of by you. I reagitated this point for keeping the fire alight. Then I examined Section 124-A and I asked the prosecution to define the term "law," appearing in that Section. I traced it to Section 5 of the Constitution Act of 1934 and from there to the Treaty of Amritsar which is impugnable.

In so far as sedition is concerned, I enumerated the principles of the law which are applicable to the cases of sedition. Then I gave you the background of the speeches and demonstrated that the principles laid down by His Highness in his statement of 1942 are what the accused swears by. The speeches are thoroughly consistent with the principles laid down by His Highness. In judging of the degree of the offence of sedition you have to bear in mind the fact that sedition is an offence which changes its complexion from time to time. What was sedition

10 or even 5 years ago is not sedition today because of the political awakening of the people. Discounting the possibility of the speeches coming within the mischief of Section 124-A I requested the history of the political awakening here to show that from 1929 down to this day the political consciousness of India as a whole and of Kashmir too has advanced by leaps and bounds, and it is reflected fully in the statement of His Highness of 1942 and also in the various demands that have been placed before this Government from time to time, the latest being "New Kashmir."

They began by saying in 1938: "The over-growing menace of unemployment amongst our educated young men and also among the illiterate masses in the country, the incidence of numerous taxes, the burden of exorbitant land-revenue, the appalling waste of human life due to want of adequate modern medical assistance, the miserable plight of uncared-for thousands of labourers outside the State boundaries and in face of all this the patronage that is being extended by the Government in the shape of subsidies and other amenities to outside capitalists as also the top heavy administration that daily becomes heavier, point to only one direction that the present conditions can never be better as long as a change is not made in the

basic principles that are underlying the present system of government."

"(a) The present system of administration in the State shall be replaced by Responsible Government subject to the general control and residuary powers of His Highness the Maharaja Bahadur as hereinafter mentioned."

This was the demand of the National Conference a few years ago. Then it was followed by "New Kashmir" two years ago which shows that political consciousness had grown under the stress of the last war and in consequence of world-wide awakening of the people. In India political consciousness had grown from "Quit India" in 1942 to "India Quitted" in 1946. I do not mind if His Highness called a Constituent Assembly of the people of his State which will mean a proper approach to the constitutional problem. Let the people of Jammu and Kashmir come together and let their representatives sit together and frame a constitution under which they want to live and let them lay down the fundamental principles of life which they think are their birth-right. His Highness can preside over this Assembly himself and guide its deliberations.

Finally I tried to convince you that when the High Courts in their judgments refer to "public disorder" being the gist of the present

day conception of sedition, it is a species of disorder which affects the public at large and incitement to such a disorder must be clearly found in the speeches themselves. The scuffle to which Brijender Mohan and Onkarnath have referred was a private quarrel and can by no stretch of imagination be called a "public disorder." Further it was not the result of the accused's speeches, but was deliberately provoked by some young men in a sudden and private quarrel.

I tried to show that no disorder had taken place during the time the speeches were made and not even until the arrest of the accused and his colleagues. Disturbances only took place on the 21st for the following reasons :—

1. The arrest of the accused and his colleagues on the 20th. The people who loved them naturally wanted to protest against those arrests and this was the signal for the military and the police to come into action—to fire upon them even in sacred places.

2. The news of this firing in the Khanqah-i-Moula and the death of a certain number of citizens naturally caused a tremendous amount of indignation throughout the State.

The above is the correct sequence of events and this disorder had nothing whatsoever to do with the accused or his speeches

and, therefore, all the evidence on that point is irrelevant and should be ignored.

I have also tried to show you that objectionable slogans were not sanctioned by the accused. In his speeches he did not sanction the objectionable slogans referring to His Highness, and the fact that none was apprehended for raising objectionable slogans from the 6th to the 20th is indisputable proof that these slogans were not raised by anyone before the 20th May.

As regards the question of Dogra Raj, in the context of these speeches, the expression does not mean anything more than the domination of a certain section of Dogras in the State and their political influence in the affairs of the State. It was aimed at autocracy also and there is no doubt in it.

Conclusion—In conclusion I must request you to bear in mind what I am about to say with all the sense of responsibility and gravity of which I am capable. Sedition is rather an all embracing offence in so far as the law is concerned, but it is very dangerous to deal with popular persons under this section. Every time you deal with them under this section, instead of remedying the evil you increase its dimensions, because the conviction of such popular leaders leads to movements which have very far reaching repercussions. After the arrest of the Congress Working Com-

mittee members in 1942, everywhere you saw 'QUIT INDIA,' inscribed in the unlikeliest places ; in public places, on public buildings, in trains, in mess-rooms, and even in barracks and schools. This was happening all over India. It is easy to confine popular leaders, but it is difficult to extinguish the fire such convictions light in the hearts of the masses. Before Sheikh Abdullah is convicted these questions must be considered very carefully and weighed in the spirit of the grave responsibility because of the repercussions which are inevitable. The mischief of conviction is greater than even the mischief caused by the alleged speeches or rather by the arrest of the accused. The remedy sought is worse than the disease. Don't let a vicious circle be created, because when you convict a person as popular as the accused, it advances the cause for which such convictions are effected. You convict and incarcerate a person and all possibility of reconciliation between the ruler and the ruled is washed out. Do not let the people think that the raising of their voice by their leaders means only convictions, sentences, misery and wretchedness. Let them feel that the Ruler is there for his people and that he is fully conscious of the feelings and sentiment of his people and who can say "I am high enough to be able to overlook even a wrong committed by my people."

This is the only way of dealing with this trouble. One conviction will not solve the problem; it will only make the mischief worse than the disease; it will drive hundreds of thousands into the wilderness of resentment sullenness and non-co-operation. It will create a vicious circle which will eventually be broken only by casting ideas of false prestige to the four winds, and conceding to public opinion what national and international ethics and law have decreed as the fundamental rights of human beings, and which alone are the most secure basis of any workable constitution that is full representative and responsible government, as adumbrated in "New Kashmir," which is the sheet-anchor of Jammu and Kashmir's independence from the "crippling restrictions and strangling control" in His Highness's words.

It has been my earnest effort throughout the trial to keep two matters out of controversy; first the Ruler and second any taint of communalism. I only hope that my endeavour has not been entirely in vain. You are aware, Sir, in what way I have done it. The only demand advanced by the spokesmen of the people on their behalf is that they should be given responsible and full representative Government. Is that a wrong demand? If no, why not concede it?

Lastly I must present to you the judgments on which I am relying. Mr. Asaf Ali then offered the Federal Court's judgment of 1942, in the case of Niharendru Dutt Majumdar *v.* Emperor (Gwyer C.J.) A.I.R. (29) 1942 Federal Court 22, the Patna High Court's judgment of 1943 in the case of Naba Krishana Chowdhury *v.* Emperor (medredith J.) A.I.R. (30) 1943 Patna 418 ; the Bombay High Court's judgment of 1944 in the case of Emperor *v.* Sadashiv Narayan Bhalesao (N.J. Wadia J.) A.I.R. (31) 1944 Bombay 244, and the Jammu and Kashmir State's Board of Judicial Advisors' judgment of 1945 in the case of Pt. Prem Nath Bazaz *v.* State (Dr. P. K. Sen) I. J. and K.L.R. 56, page 100, Vol. IV Part VI, and finally the judgment of the Lahore High Court of 1930 in the case of Satyapal *v.* Emperor (Zafar Ali, J.) A.I.R. 1930 Lahore 309, in which Zafar Ali J. has ruled that the word 'jung' or war is commonly used in political controversies and is wholly innocuous. After relevant comments he said: "In these cases you will notice that the offences were committed when the war was on, when a single word spoken against the government meant life or death, Today we are living in times of peace.

Mr. Asaf Ali then wound up his address to the Court with the following words.

"Let me, before I resume my seat, Sir.

thank you for the patient hearing you have given me. All these days I have been fully conscious of the courtesy which has been shown to me by the Court and also by my learned friends opposite. Occasionally I or my learned friends opposite felt irritated but I trust we have emerged from our professional labours as good friends.

Footnote to the Prosecution !

Brief Note by way of Reply to Prosecution's Arguments.—On essential points.

The Assistant Advocate General commenced his address to the Court with certain imadversions or rather aspersions on the defence and suggested that the defence had resorted to the vilification of the Government here. If criticism of the questionable and objectionable acts of the Government with a view to their rectification and redress constitute vilification in the eyes of the prosecution the defence must plead guilty to the charge, but apparently the prosecution is prepared to characterise every healthy criticism, and that too in defence of a person who stands charged with sedition as invective. I shall leave the Assistant Advocate General to his own conception of things and request you to go by your own impressions. We have tried our level best to be deferential to His Highness the Maharaja Bahadur, the Ruler of the State, and have observed all the proprieties to which his high station entitles him. But to expect us to spare those whose

conduct of public affairs has placed both the Ruler and the State in what I may describe as an extremely difficult position, is to ask for allowing those who are guilty of grave dereliction of duty to the Ruler, the State and its people to go scot free.

The learned Assistant Advocate General appeared to have a very queer notion of democracy and full responsible Government and the length to which he went in trying to ridicule both, and also the light-hearted manner in which he tried to prove that responsible government is no better than autocracy proved that he was wholly innocent of even the rudimentary conception of the constitutional theory of democracy. He even went the length of saying that in a democratic government only a few persons whose lust for power is not satisfied desire to exploit the democratic electoral system, and he saw no logic in asserting that the majority is wiser than the minority. It would not be worth my while to read to the Assistant Advocate General a lesson in constitutional law and to prove to him that the logic of the inherent sanction of the majority is irrefutable and the fear of a revolutionary upheaval against the rule of a minority, whether consisting of many or of one is the basis of democracy and of a secure and stable government.

However, the prosecution's contention that democracy and responsible government are repugnant to him and his clients, namely the authorities behind the prosecution, prove my case to the hilt that the prosecution had challenged the right of the people of the State to demand full responsible government and that the whole of the prosecution turned upon that issue and that issue alone.

Later on the prosecution indulged in unrestrained invective against those who were shot down by the military or were maimed or were subjected to other sufferings, and described them as men who had gone into a sacred shrine with "black murder" in their hearts, and who were no better than beasts. I may mention incidently that not a single murder was committed by these poor vilified beasts while at least 8 of them including a woman were done to death in cold blood by those whose sole concern was to prevent them from evengathering together or raising certain angry slogans. Everyone knows the English saying "Hard words break no bones," but even admitting that these people were indulging in shouting hard words, what was done to them by way of punishment certainly was, what my learned friend calls, black murder.

The Assistant Advocate General than passed on to a disquisition on what he imagined were principles of the international

law of today and inspite of the Court's hints intended to restrain him he took nearly an hour or longer reading from Historians' History of world and Hall's International Law. In support of his contention that territories can be acquired by purchase he delved in the history of the purchase of Florida by the U. S. A. in 1803, and of Alasca by Russia in 1867, and of the transfer of Bombay from Spain to England and so on, and he also referred to the cession of certain bases by England to U.S. A. in recent years, naking no effort to understand the distinction between the acquisition of property by purchase and cession of territory for certain international purposes and the sale of a kingdom by usurpers. He further claimed that the right of conquest did not admit of the recognition of the wishes of the people of the conquered territory and so on. By doing all this he was justifying both the Sale-deed of Kashmir, otherwise known as the Treaty of Amritsar, and he was also claiming that the ruling house of the day traced their title to the right of conquest. All this was intended to prove that the people had no right to demand or claim responsible government on the basis of their inherent right of the people's overeiignty. I was more than amused by this argument. I was delighted, for the whole of my case was that the speaker had complained against the treatment of the

people of Kashmir as "bought slaves" and had maintained that this hurt the human dignity and self-respect of the 4 million people of Kashmir, and, therefore, the relations between the Ruler and the ruled should rest not on such claims and titles, but on the goodwill and the affection of the people. This is neither the place nor the time for contesting the prosecution's argument that the purchase of Kashmir should be considered as a valid deal between the East India Company who were no better than aggressors in this country and the founder of the present Ruler's house, but I am bound to make the observation that the authorities would be grievously ill-advised to rely on such arguments in the years 1946. The right of conquest ceased to exist after the first world war when the Peace Treaty of Versailles recognised the right of self-determination and when the League of Nations confirmed the international conception of aggression and when Poland, Czechoslovakia, Lithuania, Estonia, and Latvia, to mention only a few countries, which had endured subjection under the rule of those who were there by the right of conquest were recognised as independent countries after over a century and longer in certain cases. The conflagration of the last war was originally started by Germany's aggression against Poland, and although Germany, Italy and Japan con-

quered nearly half the civilised world their right of conquest was contested by more than 35 nations of the world and the aggressors were beaten out of the ring. To talk of the right of conquest today is to try to put the hand of the clock back by half a century at least. In any case all the law that my learned friend quoted on the subject had become out of date after the first world war. *Again talking of the right of purchase it should not be forgotten that while purchase and secession of territory may be valid between nations even today no individuals would be allowed to buy kingdoms against the will of the people of the territories so acquired.*

My learned friend was at great pains to ridicule the principle of plebiscite and quoted Hall's opinion on the subject. He referred you to page 54 of Hall's International Law, and I would request you to read at the bottom of the same page the note which runs as follows :—

“The principle of Plebiscite is adopted in numerous cases in the treaties of peace at the conclusion of war 1914-1918 under the influence of the principles of political philosophy to which the name self-determination has been applied, and which President Wilson called “*an imperative principle of action which statesmen henceforth will ignore at their peril.*” In the case of Alsace and

Lorain no plebiscite was taken because it was recognised that Germany had done a wrong in 1871 (please note this year which is atleast by a quarter of a century in advance of the date of the acquisition of Kashmir by purchase) both to the rights of France and to the wishes of the population of Alsace and Lorain."

This is a quotation from the preamble to the Treaty of Versailles. We must never forget that international law is not a rigid corpus; it is an organic growth of international conscience. *The right of conquest once an accepted principle of international law has now become a culpable international offence punishable with death and worse. The trials of war criminals and the terrible penalty of aggression are only too well-established today and none dare plead the right of domicile is still there but it confers only those rights of conquest without being called an aggressor. The right upon men of foreign extraction which the State as a whole, which means the people, would be prepared to concede. The right of conquest if permitted would mean the right of re-conquest as illustrated in the last war in the case of Abyssinia, the whole of Europe, and the whole of Indonesia, Burma, Malaya, Indo-China, and a great part of China. The right of reconquest in these cases also presupposed even a violent revolution by*

the people which were encouraged by the Allied powers also during the last war. It is, therefore, extremely dangerous for my learned friend to try to justify either the right of conquest or the right of acquiring sovereignty over a people by purchasing the territory inhabited by them. The only right which is the safest, the securest, and the noblest is the right of love and affection and of the service of the people who as a reward may confer upon its Chief Servant, the Ruler, such authority and powers as they deem necessary for the protection of their rights and for the advancement of their well-being.

Judgment

“ Offences under Section 124 (A) R.P.C. for all the three speeches are proved against him. He is convicted under the above Section on all the three counts and sentenced to three years’ simple imprisonment with fine of rupees five hundred on each score. In default of payment of fine he shall further undergo simple imprisonment for three months on each count. The sentences of Imprisonment shall run concurrently. . . .”

Order announced.

Dated 10th September 1946.

**(Sd.) BARKAT RAI
Sessions Judge, Kashmir**

Appendices

1. Treaty of Amritsar.—Treaty between the British Government and Maharaja Gulab Singh concluded at Amritsar on March 6, 1846.

Treaty between the British Government on the one part, and Maharaja Gulab Singh of Jammu on the other, concluded on the part of the British Government, by Frederick Currie, Esquire, and Brenet, Major Henry Montgomery Lawrence, acting under the orders of Right Honourable Sir Henry Hardinge G.C.B., one of Her Britannic Majesty's most Honourable Privy Council, Governor-General appointed by the Honourable Company to direct and control all their affairs in the East Indies, and by Maharaja Gulab Singh in person.

Article 1. The British Government transfers and makes over, for ever in independent possession, to Maharaja Gulab Singh, and the heirs male of his body, all the hilly or mountainous country, with its independencies, situated to the eastward of the River Indus, and westward of the River Ravi including Chamba and excluding Lahul, being part of the territory ceded to the British Government by the Lahore State according to the Provisions of Article 4 of the Treaty of Lahore, dated 9th March, 1846.

Article 2. The eastern boundary of the tract transferred by the foregoing Article to Maharaja Gulab Singh shall be laid down by the Commissioners appointed by the British Government and

Maharaja Gulab Singh respectively, for that purpose, and shall be defined in a separate engagement, after survey.

Article 3. In consideration of the transfer made to him and his heir by the provisions of the foregoing Articles, Maharaja Gulab Singh will pay to the British Government, the sum of 75 lacs of rupees (Nankshahi) 50 lacs to be paid on ratification of this treaty, and 25 lacs on or before the 1st of October of the current year A.D. 1846.

Article 4. The limits of the territories of Maharaja Gulab Singh shall not be at any time changed without the concurrence of the British Government.

Article 5. Maharaja Gulab Singh will refer to the arbitration of the British Government any dispute or questions that may arise between himself and the Government of Lahore, or any other neighbouring State, and will abide by the decision of the British Government.

Article 6. Maharaja Gulab Singh engages for himself and heirs, to join, with the whole of his Military force, the British troops, when employed within the hills, or in the territories adjoining his possessions.

Article 7. Maharaja Gulab Singh engages never to take, or retain, in his service any British subject, nor the subject of any European or American State, without the consent of the British Government.

Article 8. Maharaja Gulab Singh. engages to respect in regard to the territory transferred to him, the provisions of Articles 5, and 7 of the separate engagement between the British Government and the Lahore Durbar, dated 11th March, 1846.

Article 9. The British Government will give its aid to Maharaja Gulab Singh, in protecting his territories from external enemies.

Article 10. Maharaja Gulab Singh acknowledges the supremacy of the British Government, and will in token of such supremacy, present annually to the British Government one horse, twelve goats, (six male and six female) and three pairs of Kashmiri shawls.

This treaty consisting of the Articles has been this day settled by Fredrick Currie, Esqr., and Brenet Major Henery Montgomery Lawrence acting under the directions of the Right Hon'ble Sir Henry Hardinge, G.C.B., Governor-General on the part of the British Government and by Maharaja Gulab Singh in person and the said treaty has been this day ratified by the seal of the Rt. Hon. Sir Henry Hardinge, G.C.B., Governor-General.

Done at Amritsar this 16th May of March in the year of our Lord 1846 corresponding with the 17th day Rabi-ul-awwal 1262 Hijri.



2. The resolution adopted by the States People's Conference at Ludhiana Session held in 1939 on the treaties of Indian princes with the paramount power.

Whereas great stress has been laid on old treaties between the British power and the states and attempts have been made to use these treaties to perpetuate autocracy and the semi-feudal order which so long prevailed in the states and to obstruct the progress of the people, it is necessary to point out the real character of these treaties, the manner and circumstances under which they were made, the person who made them, and the interpretations placed on them in later years. Out of 562

states in India only forty have such treaties, and these were usually made after a conflict between the officers and agents of the East India Company and persons who had no status of independence, but who had come to exercise authority over part of the country, after the collapse of the central authority in India, which resulted from the fall of the Mughal empire. The treaties were made without any reference to or regard for the people and applied to the existing circumstances. Gradually, as these circumstances changed they ceased to have any importance, and many of them were ignored or even completely abrogated long ago by the practice of the Political Department of the Government of India, which varied and developed with the changing policy of the Paramount Power. In any event the treaties made over a century ago cannot be considered binding on the people of the states at a time when conditions have entirely changed. The treaties are now used by the Paramount Power to intervene in the struggle for freedom in the states in favour of the Rulers, and the obligation of this power to protect the people from misrule oppression is ignored.

This conference is strongly of opinion that these treaties should be forthwith ended as being completely out of date and inapplicable to present conditions, and it calls upon the Paramount Power to refuse help or protection to those Rulers who decline to put all end to misrule and who attempt to crush the movement for freedom in these states.



3. Pandit Jawaharlal Nehru's remarks on treaty rights of Princes in his presidential address at Ludhiana session in 1939.

"We are told now of the so-called independence of the states and of their treaties with the

Paramount Power which are sacrosanct and inviolable and apparently must go on for ever and ever. We have recently seen what happens to international treaties and the most sacred of covenants when they do not suit the purpose of Imperialism. We have seen these treaties torn up, friends and allies basely deserted and betrayed and the pledged word broken by England and France. Democracy and freedom were the sufferers and so it did not matter. But when reaction and autocracy and imperialism stand to lose, it does matter and treaties, however moth-eaten and harmful to the people they might be, have to be preserved. It is a monstrous imposition to be asked to put up with these treaties of a century and a quarter ago, in the making of which the people had no voice or say. It is fantastic to expect the people to keep on their chains of slavery, imposed upon them by force and fraud, and to submit to a system which crushes the life-blood out of them. We recognise no such treaties and we shall in no event accept them. The only final authority and paramount power that we recognise is the will of the people, and the only thing that counts ultimately is the good of the people."



4. Pandit Jawaharlal Nehru's remarks in his presidential address at the Udaipur Session of the All-India States Peoples' Conference held in December, 1945.

"Frequently we criticise and blame the rulers of these States, and often they are deserving of censure. But it is well to remember that they are mere shadows cast by the imperial power and the responsibility for the backward condition of the States rests with the Power which has deliberately kept them as they are and prevented their progress. It is well known that Princes with advanced or independent views are not favoured by the Political

Department of the Government of India. Many of them are saddled with ministers imposed by the Political Department. In dealing with the States, therefore, we deal with the British Government in another guise. As soon as that Government goes from India, the problem changes completely.

This fact has been stressed recently by a British authority, Sir Geoffrey de Montmorency in his book, 'The Indian States and Indian Federation' (1942). "The States," he says, "are still so numerous in India that they offer a grave conundrum in relation to which no solution is at present forthcoming. . . . Their disappearance and absorption would, of course, be inevitable if Britain ever ceased to be supreme power as regards India." It is interesting to note that the Nizam of Hyderabad, who now claims independence, echoed these sentiments in a semi-firman issued by him about a year ago.

De Montmorency says that no solution of the problem is forthcoming, and yet he himself suggests the obvious solution : the elimination of the British power from India. Many of our problems, including the communal problem, would be solved when this happy consummation takes place. Hence the demand : Quit India.

When this is the position it becomes irrelevant and absurd to talk of treaty rights or so-called independence. Indeed no responsible person can take shelter behind these treaties of over a hundred years ago.

It is well to remember also that out of 600 States only about 40 have such treaties. The relations of the other States with the British Paramount Power are regulated by 'engagements,' 'sanads,' 'usage, sufferance,' 'political practices,' and 'convention'."

5. The resolution passed by the Working Committee of the All-Jammu and Kashmir National Conference on February 10, 1946, at Jammu, on the treaty rights claimed by Princes.

The Working Committee of the Jammu and Kashmir National Conference have taken into consideration the speech made by the Viceroy of India in the Princes' Chamber on the 17th January, 1946 along with the declaration made by the Chancellor of the Chamber on behalf of the Princes regarding constitutional advancement in the States. After fully examining the salient points in both the speeches, the Working Committee have come to the following conclusions :—

1. That the advice tendered by the Crown Representative to the Princes regarding the steps to be taken in making the administration of these States progressive did not amount to anything progressive. In fact it lost all its significance when he (Viceroy), made such progress conditional on the maintenance of the treaties and the consent of the Princes. These treaties and engagements which are outdated, reactionary and questionable have always stood and will always stand in the way of the States Peoples' progress and to think that the Rulers will give up their privileged positions that they enjoy under them at their sweet will is nothing but wishful thinking. The National Conference has at several occasions made it clear that these treaties have been made in times and under circumstances which do not obtain now and have been framed without seeking the consent of the States People. Under such circumstances no treaties or engagements which act as a dividing wall between their progress and that of their brethren British India, can be binding on the People.

6. The telegram sent by Sheikh Mohammad Abdullah, President, All-Jammu and Kashmir National Conference, to the members of the British Cabinet Mission, while they were in Srinagar.

"As President, All-Jammu and Kashmir National Conference representing all communities and classes of people inhabiting Jammu and Kashmir State I welcome your visit to our state and hope that it will usher in new era of freedom both political and economic for four million state people. As Mission is at present reviewing relationship of Princes with the Paramount Power with reference to treaty rights we wish to submit that for us in Kashmir re-examination of this relationship is vital matter because hundred years ago in 1846 land and people of Kashmir were sold away to servitude of Dogra House by British for seventy-five lacs of Sikh rupees equivalent to fifty lakhs British Indian rupees. Then Governor of Kashmir resisted transfer, but was finally reduced to subjection with aid of British. Thus sale deed of 1846 misnamed treaty of Amritsar sealed fate of Kashmir masses. We declare to world that this sale deed confers no privileges equivalent to those claimed by states governed by treaty rights. As such case of Kashmir stands on unique footing and people of Kashmir press on Mission their unchallengeable claims to freedom on withdrawal of British power from India. We wish to declare that no sale deed however sacrosanct can condemn more than four million men and women to servitude of an autocrat when will to live under this rule is no longer there. People of Kashmir are determined to mould their own destiny and we appeal to Mission to recognise justice and strength of our cause."
